



You have downloaded a document from
RE-BUŚ
repository of the University of Silesia in Katowice

Title: The principles of civil procedure in Poland in the twentieth century : doctrine, drafts and law in a comparative perspective

Author: Anna Machnikowska, Anna Stawarska-Rippel

Citation style: Machnikowska Anna, Stawarska-Rippel Anna. (2016). The principles of civil procedure in Poland in the twentieth century : doctrine, drafts and law in a comparative perspective. "Comparative Law Review" (Vol. 21 (2016), s. 81-153), doi 10.12775/CLR.2016.004



Uznanie autorstwa - Bez utworów zależnych Polska - Ta licencja zezwala na rozpowszechnianie, przedstawianie i wykonywanie utworu zarówno w celach komercyjnych i niekomercyjnych, pod warunkiem zachowania go w oryginalnej postaci (nie tworzenia utworów zależnych).



UNIWERSYTET ŚLĄSKI
W KATOWICACH



Biblioteka
Uniwersytetu Śląskiego



Ministerstwo Nauki
i Szkolnictwa Wyższego

Anna Machnikowska*

Anna Stawarska-Rippel**

THE PRINCIPLES OF CIVIL PROCEDURE IN POLAND IN THE TWENTIETH CENTURY. DOCTRINE, DRAFTS AND LAW IN A COMPARATIVE PERSPECTIVE

Abstract

Three fundamental state system and legal transformations, which took place in Poland in the 20th century, make the history of the Polish law of civil procedure an important and intriguing research thread, especially in a comparative perspective. The aim of this article is to demonstrate the problem of the principles of civil procedure in codification works which were in progress before the regaining of independence in 1918. They were continued in the Second Republic of Poland and developed further after the Second World War until the second Polish Code of Civil Procedure was adopted in 1964. Codification works in the Second Republic of Poland and the People's Republic of Poland were quite different regarding their determinants and also conditions. However both presented the phenomenon of a deviation from the original assumptions and concepts, which were postulated by the authors of the original drafts. Such deviation was usually adverse. The changing fate of Polish civil procedure did not threaten the heritage of Polish jurisprudence. The adversarial and dispositive principles, as well as the principle of oral proceedings and the principle of the free appraisal of evidence were constantly present in the Polish legal system. Nevertheless, after World War II some significant modifications were imposed that limited the autonomy of the parties and the independence of the court owing to the political subordination to the Soviet Union. However, the attitude of the majority of Polish lawyers enabled many standards of the classic judicial proceedings to be maintained, and thereby also the relations with the European doctrine of procedural law.

* Dr hab. Anna Machnikowska, prof. UG, the Chair of Civil Procedure, Faculty of Law and Administration of the University of Gdańsk; e-mail: anna.machnikowska@ug.edu.pl.

** Dr Anna Stawarska-Rippel, Department of the History of Law, Faculty of Law and Administration of the University of Silesia in Katowice, e-mail: anna.stawarska-rippel@us.edu.pl.

Keywords

principles of civil procedure – Codification Committee – Second Republic of Poland – People's Republic of Poland – adversarial principle – dispositive principle – principle of instructionality

FUNDAMENTAL PRINCIPLES IN THE VIEWS OF THE AUTHORS OF THE DRAFTS OF THE FIRST AND SECOND POLISH CODES OF CIVIL PROCEDURE – A COMPARATIVE PERSPECTIVE

Anna Stawarska-Rippel

1. INTRODUCTION

The last century in Poland, full of fundamental transformations of the state system, resulted in the codification (1930¹), followed by the decodification (1950²), and recodification (1964³) of civil procedure.

The codification works that had been undertaken twice in Poland seem quite distant owing to the various determiners and conditions in which they were led⁴. After the 1st World War, when Poland regained its independence, the issues of integrating Polish lands that were torn apart by the partitions (1772-95), and restoring Polish statehood, became those of the highest importance. In the context of the legal systems mosaic that was in force at that time⁵ it was mainly a political issue⁶: “Such a diversity

¹ Decree-Law of President of the Republic of Poland from 29.11.1930 The Code of Civil Procedure, Dz.U. [Journal of Laws] 1930, No. 83, item 651; uniform text – Dz.U. [Journal of Laws] 1932, No. 112, item 934.

² Act from 20.07.1950 amending the regulations of civil proceedings, Dz.U. [Journal of Laws] 1950, No. 38, item 349; uniform text – Dz.U. [Journal of Laws] 1950, No. 43, item 394.

³ Act from 17.11.1964 the Code of Civil Procedure, Dz.U. [Journal of Laws] 1964, No. 43, item 269.

⁴ This article contains some considerations and conclusion included in the monograph A. Stawarska-Rippel, *Elementy prywatne i publiczne w procesie cywilnym w świetle prac kodyfikacyjnych w Polsce (1918-1964). Studium historycznoprawne* [Private and Public Aspects in the Civil Procedure in the Light of Works on the Codification in Poland (1918-1964). Legal-Historical Study], Katowice 2015.

⁵ After independence in 1918, five different legal systems were in force: a German system in western Poland, Austrian in the South, Russian in eastern Poland, Russian, Polish and French law in central Poland and Hungarian Law in small parts of Szepes and Orava in southern Poland.

of legislation with its strong influence on private-legal relations makes us four, or at least three nations that live in separate legal conceptions imbued with various, often contrary views and beliefs”⁷. A regional patriotism came about as a natural result of that: “Law forces itself into all aspects of human life and unnoticeably descends to the depth of human soul; *exercitio iuris* becomes *consuetudo*, then it transforms into *inveterata consuetudo*, which is *alter natura*. So what is so surprising in a man fighting for what has become his second nature, for the law that he has become accustomed to”⁸.

The existing legal mosaic led to some obstacles which, in the context of the codifying works that were begun in Poland, and stressed in the speech of the eminent French civil law specialist François Géný in Warsaw in November 1921⁹, led the reborn Republic of Poland to become not only a national legislative work campus, but a specific “laboratory of law and comparative legislation”¹⁰, which made it possible to “research and compare the value of the modern Polish law – *de lege ferenda* – from *lex lata* of the foreign law”¹¹ as well¹². Emphasising on the specific situation of the

⁶ A. Lityński, *Pół wieku kodyfikacji prawa w Polsce (1919-1969). Zagadnienia wybrane* [Half of a Century of Codification of Law in Poland (1919-1969). Selected Issues], Tychy 2001, p. 31.

⁷ Przemówienie H. Konica, przewodniczącego podkomisji redakcyjnej na zebraniu u Prezydenta Rzeczypospolitej w dniu 18 lutego 1925 r. [Speech of H. Konic, Chairman of the Editorial Committee at the Meeting with President of Republic of Poland on 18 February 1925], *Gazeta Sądowa Warszawska* [Warsaw Judicial Gazette] 1925, no. 9, p. 140.

⁸ J. Skąpski, *System środków prawnych w projekcie polskiej procedury cywilnej* [The System of Legal Remedies in the Draft of Polish Civil Procedure], *Głos Prawa* [The Voice of Law] 1927, no. 12, p. 432. This statement quoted earlier L. Górnicki, *Działalność kodyfikacyjna Józefa Skąpskiego seniora* [Contribution of Józef Skąpski Senior in the Codification Works], [in:] R. Majkowska, L. Nowak (eds), *Józef Skąpski ojciec 1868-1950, Józef Skąpski syn 1921-1998* [Józef Skąpski Father 1868-1950, Józef Skąpski Son 1921-1998], Kraków 2014, p. 67.

⁹ K. Sójka-Zielińska, *Organizacja prac nad kodyfikacją prawa cywilnego w Polsce międzywojennej* [Organisation of the Codification Works on the Civil Law in Interwar Poland], *Czasopismo Prawno-Historyczne* [Journal of Law and History] 1975, vol. 2, p. 276; L. Górnicki, *Prawo cywilne w pracach Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej w latach 1919-1939* [The Civil Law in the Works of the Codification Committee of the Second Republic of Poland 1919-39], Wrocław 2000, p. 84.

¹⁰ *Sprawozdanie Sekretarza Generalnego prof. E.S. Rappaporta, z dziesięcioletniej działalności Komisji Kodyfikacyjnej (1919-1929)* [Report of the Secretary-General Prof. E.S. Rappaport, From the Ten Years of Conduct of the Codification Committee (1919-1929)], Komisja Kodyfikacyjna Rzeczypospolitej Polskiej, Dział ogólny [Codification Committee of the Second Republic of Poland, General Section], tome I, vol. 12, Warszawa 1929, p. 373.

¹¹ Ibidem.

reborn Poland, in the light of the situation of other post-war countries, F. Gény pointed out that states including: Czechoslovakia, Yugoslavia, and Romania spread the highest applied legislation onto the new territories or reformed the legal state in force¹³. In such a context it is interesting to look at the example of the Kingdom of Serbs, Croats and Slovenes, which had been under the influence of Austrian law for a long time. However the reception of Austrian institutions in fact did not take place. Practice followed its own autonomous way, mainly owing to political reasons. Furthermore, an almost ten-year period until the outbreak of the world war did not allow the solutions of the Yugoslavian Code of Civil Procedure (1929) based on the Austrian Code to take root¹⁴.

Codification work in Poland after the First World War, which was unprecedented in Europe and even in the world, resulted in the first Polish Code of Civil Procedure – an original work, which was the outcome of many years of hard work on the part of the most prominent Polish lawyers. This Code, which was applied in its original version for less than twenty years, was in force after the Second World War, but in a mutilated, marginalised form, until the second Polish Code of Civil Procedure entered into force.

After the Second World War, the countries which were under the influence of the USSR faced the problem of making radical changes in their legal systems. Some of them, such as Poland, Hungary, and Bulgaria, began recodification of the procedural law. Czechoslovakia, on the other hand, codified its Code of Civil Procedure for the first time. However Romania was an exception. The Romanian Code of Civil Procedure of 1865, which

¹² Recently in the context of a tasks of legal comparative studies in the field of civil procedure see K. Lubiński, *Komparatystyka prawa a unifikacja i kodyfikacja polskiego prawa procesowego cywilnego w okresie międzywojennym* [Legal Comparative Studies and Unification and also Codification of Polish Civil Procedure in the Interwar Period], [in:] A. Wudarski (ed.), *Polska komparatystyka prawa. Prawo obce w doktrynie prawa polskiego* [Polish Legal Comparative Studies. Foreign Law in Polish Doctrine of Law], Warszawa 2016, pp. 347-364. About the first Polish code of civil procedure in a comparison to the German, Austrian, Russian, and French civil procedure see A. Polkowski, *Die polnische Zivilprozessordnung von 1930/1933. Unter Berücksichtigung des deutschen, österreichischen, russischen und französischen Recht*, Frankfurt am Main 2009.

¹³ Sójka-Zielińska, *supra* note 9, p. 276; Górnicki, *supra* note 9, p. 84.

¹⁴ A. Uzelac, *Accelerating Civil Proceedings in Croatia – A History of Attempts to Improve the Efficiency of Civil Litigation*, [in:] C.H. van Rhee (ed.), *The Law's Delay. Essays on Undue Delay in Civil Litigation*, Antwerpen–Groningen 2004, p. 288.

was based on the French Code of Civil Procedure (1806), survived the time of the people's state. In the German Democratic Republic (GDR) the Code of Civil Procedure of 1877 went through fundamental changes on the 8th of November 1933 and was in force till 1975. It has been revised three times since the Second World War¹⁵.

Creating a new legal system and accepting socialist models of civil procedure resulted in fact in a great and forced unification of procedural law in the people's democracy countries. That unification was done very quickly. In the context of unification and codification it is interesting that the first and entire codification in the whole history of Russia took place in the USSR. Under this codification was created the first separate Code of Civil Procedure (1923)¹⁶. It is also noticeable that the law in all the republics of the Soviet Union was unified according to the principles of the legislation which was issued under the provisions of the Supreme Council of the USSR on 11th February 1957¹⁷. The unification was announced in the constitution of 1924, which authorised the USSR to create foundations for the administration of justice system and legal proceedings as well as civil and criminal law.

The beginnings of assimilating the Soviet patterns in Polish judicial law are perceived in the context of the political turnabout in 1948, but

¹⁵ E. Wengerek, [in:] M. Cappelletti, B.G. Garth (eds), *International Encyclopedia of Comparative Law*, vol. XVI *Civil Procedure*, chapt. 1 *Introduction – Policies, Trends and Ideas in Civil Procedure*, Tübingen-Dordrecht-Boston-Lancaster 1987, pp. 142-144.

¹⁶ A. Stawarska-Rippel, *O pierwszym radzieckim kodeksie procedury cywilnej. Postępowanie cywilne od dekretów o sądzie do początków rekodyfikacji radzieckiego prawa* [On the First Soviet Code of Civil Procedure. Civil Proceedings from the Decrees on the Court until the Beginnings of Soviet Law Recodification], [in:] M. Mikołajczyk, J. Ciągwa, P. Fiedorczyk, A. Stawarska-Rippel, T. Adamczyk, W. Organiściak, K. Kuźmicz (eds), *O prawie i jego dziejach księgi dwie. Studia ofiarowane Profesorowi Adamowi Lityńskiemu w czterdziestopięciolecie pracy naukowej i siedemdziesięciolecie urodzin* [On Law and Its History Books Two. Study Presented to Professor Adam Lityński on his Forty Years of Academic Work and His Seventieth Birthday], Book II, Białystok-Katowice 2010, pp. 335-366.

¹⁷ K. Lubiński, *Tendencje unifikacyjne w rozwoju prawa postępowania cywilnego* [Unification Tendencies in the Development of Civil Procedural Law], [in:] A. Marciniak (ed.), *Księga pamiątkowa ku czci Profesora Witolda Broniewicza. Symbolae Vitoldo Broniewicz dedicatae* [A Commemorative Book in Honour of Professor Witold Broniewicz. Symbolae Vitoldo Broniewicz dedicatae], Łódź 1998, p. 230; A. Lityński, *Prawo Rosji i ZSRR 1917-1991, czyli historia wszechzwiązkowego komunistycznego prawa (bolszewików). Krótki kurs* [Law of Russia and USSR 1917-1991, that is History of the All-Union Communist Party (Bolsheviks). Short Course], Warszawa 2012, p. 211, p. 287.

the reconstruction of procedural law was indicated by a discussion on the character of the degree of jurisdiction that took place before the politically important year of 1948.

The need to carry out works on the changes of the civil procedure at a sufficiently high level by an adequate codifying apparatus composed of the eminent lawyers was expressed by Marian Waligórski – author of canon of the Polish literature of civil procedure¹⁸, even before the political breakthrough in 1948. Facing the fact that the Codification Committee was not reappointed after the second war, as most of its members did not survive the war, M. Waligórski stressed the necessity to involve people with appropriate qualifications¹⁹. This important postulate was ignored for political reasons. The latter decodification of civil procedure in the People's Republic (20 July 1950) introduced rushed and excessively socialist innovations, which appeared to be quite permanent. The main retrograde step in the evolution of Polish civil proceedings at the first stage of the so called reform in the People's Republic, and going deep to its fundamentals, however, in the preserved archives referred to as a small reform, set the permanent direction for “new ways” in Polish civil procedure. The decodification of the civil procedure resulted in many adverse phenomena, which to a greater or lesser degree accompany every state transformation. The inconsistency of regulations favoured creative interpretations that enhanced the changes²⁰. The deformation of the first Polish Code of Civil Procedure (1930) was made even worse by the draft of a new code prepared at the Ministry of Justice (1955), which finally did not enter into force.

M. Waligórski's postulate was realised to some extent, as was possible at that time, not earlier than in 1956. On the wave of the political “thaw” after Stalinism (1956) the effects of works on the changes in civil procedure were strongly criticised because of their being perceived as a reflection

¹⁸ M. Waligórski, *Polskie prawo procesowe cywilne. Funkcja i struktura procesu* [Polish Law of Civil Procedure. Function and Structure of the Proceedings], Warszawa 1947.

¹⁹ M. Waligórski, *Zmiany proceduralne w związku z ostatnią unifikacją prawa cywilnego* [Civil Procedural Law Changes in the Context of the Last Unification of the Civil Law], *Państwo i Prawo* [State and Law] 1946, no. 5-6, p. 93.

²⁰ A. Stawarska-Rippel, *Prawo sądowe Polski Ludowej 1944-1950 a prawo Drugiej Rzeczypospolitej* [The Judicial Law in People's Poland 1944-1950 and the Law of the Second Republic of Poland], Katowice 2006, pp. 95-105, 122-126.

of faulty political concepts, the anonymity of the projects, and, above all, the lack of a wider participation of the representatives of academic lawyers²¹. The codification work that was undertaken in Poland in 1956 gave hope to conduct this work far away from ideological, political directives and to return to traditional constructions of the law. Relative freedom in the Codification Committee of the People's Republic of Poland (established in August 1956) which resulted from liberalisation connected with the political breakthrough, ended quickly at the beginning of the 1960s. At first, the works on the Second Code of Civil Procedure were conducted within a positive political atmosphere. They were characterised by substantial discussion, supported by comparative analysis beyond socialist law and going deeper into the essence of civil proceedings in the light of its development and they generated a very good draft (1960) that might have constituted evolution. This draft was considered later as too innovative – too “bourgeois”.

The following of the Soviet model that was in the process of change can be observed in the second edition of the draft of Polish Code of Civil Procedure (1964). Some innovations, there were introduced in the Fundamentals of civil procedure of the USSR and Union Republics (1961), later implemented in the codes of the republics of the USSR²², appeared in it too. The recodification of the Soviet civil procedure (1961-1964) of that time established new concepts as to the aim and function of civil

²¹ W. Czachórski, *Przebieg prac nad kodyfikacją prawa cywilnego PRL* [Conduct of the Work on the Civil Law Codification in the People's Republic of Poland], *Studia Prawnicze* [Legal Papers] 1970, vol. 26-27, pp. 14-15; S. Grzybowski, *Zagadnienia kodyfikacji polskiego prawa cywilnego (organizacja i wyniki pracy 1919-1992)* [Issues of Codification of Polish Civil Law (Organisation and Effects 1919-1992)], *Kwartalnik Prawa Prywatnego* [The Private Law Quarterly] 1992, vol. 1-4, p. 103; J. Skąpski, *Kodeks cywilny z 1964 r. Blaski i cienie kodyfikacji oraz jej perspektywy* [The Civil Code of 1964. Pros and Cons of Codification and its Prospects], *Kwartalnik Prawa Prywatnego* [The Private Law Quarterly] 1992, vol. 1-4, pp. 71-73; A. Lityński, *Na drodze do kodyfikacji prawa cywilnego w Polsce Ludowej* [On the Way to the Codification of Civil Law in People's Republic of Poland], [in:] G. Bałtruszajtys (ed.), *Prawo wczoraj i dziś. Studia dedykowane profesor Katarzynie Sójce-Zielińskiej* [Law Yesterday and Today. Studies Dedicated to Professor Katarzyna Sójka-Zielińska], Warszawa 2000, pp. 151-153; P. Fiedorczyk, *Unifikacja i kodyfikacja prawa rodzinnego w Polsce (1945-1964)* [The Unification and Codification of Family Law in Poland (1945-1964)], Białystok 2014, pp. 288-290.

²² A. Stawarska-Rippel, *O rekodyfikacji radzieckiego postępowania cywilnego* [On Recodification of the Soviet Civil Procedure], *Z Dziejów Prawa* [From the History of the Law] 2011, vol. 4(12), p. 188 et seq.

proceedings, setting the directions for the codification works also in Poland. Besides, it was difficult to cross the boundaries that were determined in the regression caused by the Act of 1950.

That alternately revolutionary and evolutionary direction of changes in Polish civil procedure after the Second World War, resulting in a generally well-perceived codification, which in its first version was an entity of the past era, did not manage to impede the continuity of legal thought in civil proceedings²³.

The effects of the codification works in the civil proceedings that were undertaken twice in Poland of the 20th century are known. However, the lawmakers' thought-processes and its sources resulting from the preparatory materials are often much more valuable than the code itself: "Unfortunately! More than one courageous, independent and pleasant idea sparkled and was extinguished because it was not endorsed (...) it was not lost for the idea of the development of the proceedings (...) the future, that eternal adjuster of life, as Norwid named it, more than once unearths abandoned thoughts out from the dust of oblivion"²⁴.

2. BEFORE INDEPENDENCE IN 1918 AND THE INTERWAR PERIOD

Even before the regaining of independence by Poland in 1918, when the hope of establishing Polish administration of justice arose, in February 1917 the Provisional Council of the Kingdom of Poland created the

²³ J. Gudowski, *O kilku naczelnych zasadach procesu cywilnego – wczoraj, dziś i jutro* [On Some Fundamental Principles of Civil Proceedings – Yesterday, Today and Tomorrow], [in:] A. Nowicka (ed.), *Prawo prywatne czasu przemian. Księga pamiątkowa ku czci Profesora Stanisława Sottysińskiego* [Private Law in a Period of Changes. A Commemorative Book in Honour of Professor Stanisław Sottysiński], Poznań 2005, p. 1015, 1023; M. Sawczuk, *Tradycja a postęp w nowelizacji cywilnego prawa sądowego (in statu nascendi)* [Tradition and Progress in the Amendment of the Civil Judicial Law (in statu nascendi)], *Teka Komisji Prawniczej – OI PAN* [TEKA Commission of Legal Sciences], Lublin 2008, p. 168; A. Mączyński, *Uwagi o stanie nauki polskiego prawa cywilnego* [Comments on the Condition of the Knowledge of Polish Civil Law], *Państwo i Prawo* [State and Law] 2011, no. 6, pp. 6-8; A. Machnikowska, *50-lecie kodeksu postępowania cywilnego z dalekiej i bliskiej perspektywy* [50th Anniversary of the Code of Civil Procedure from Far and Close up Perspective], *Kwartalnik Prawa Prywatnego* [The Private Law Quarterly] 2015, vol. 3, p. 551 et seq.

²⁴ J. Hroboni, *Syntetyczna ocena procedury cywilnej w świetle materiałów ustawodawczych* [Synthetic Assessment of Civil Procedure in the Light of Legislative Materials], *Przegląd Prawa i Administracji* [The Review of Law and Administration] 1931, p. 20.

Department of Justice. Its Director at that time, Stanisław Bukowiecki, organised the Civil Law Committee (the Warsaw Committee) in March 1917. Its first and main task was to prepare a draft of Polish civil procedure²⁵. The lack of any strictly Polish tradition in civil procedure led the Committee to carry out their own independent comparative research. The Committee took into consideration comparative material from foreign legislation, especially from French (1806), Russian (1864), German (1877), Austrian (1895) and Hungarian (1911) civil proceedings. Polish civil procedures were not to be implemented quickly, an event which the author, hidden behind initials, was afraid of. He rightly drew attention to the fact that confusion in legal relations after regaining independence would be inevitable and it should not be deepened²⁶. The same author saw the importance of engaging the outstanding experts on civil proceedings, the professors of Warsaw, Cracow, and Lvov universities, to work on the future Code of Civil Procedure. Because of the need to base the codification works on the critical-comparative method he proposed translating the texts of the codes of civil procedure, or improving thoroughly the translations that had already been done as well as the commentaries on those codes, and proposed to send expert lawyers to Germany, Austria, France, and Belgium to learn the civil proceedings in practice. Those important postulates were implemented by the Codification Committee appointed by a Act of 3rd June 1919, which did not limit itself to the patterns of the laws

²⁵ The President of the Commission of Civil Law at the Department of Justice was Jan Jakub Litauer, attorney, since 1.09.1917 also a judge of the Supreme Court. See S. Car, *Sprawozdanie z prac Komisji Prawa Cywilnego za okres od 10 marca do dnia 15 października 1917 r.* [Report on the Works of the Commission of Civil Law from 10 March to 15 October 1917], *Gazeta Sądowa Warszawska* [Warsaw Judicial Gazette] 1917, no. 9, pp. 87-89; *Główne zasady polskiej procedury cywilnej. Z prac Komisji przy Departamencie Sprawiedliwości. Część I* [The Main Principles of Polish Civil Procedure. On the Work of the Commission at the Department of Justice. Part I], *Kwartalnik Prawa Cywilnego i Handlowego* [Civil and Commercial Law Quarterly] 1917, vol 1-4, pp. 563-564; S. Gołąb, *Projekty polskiej procedury cywilnej. Powstanie – uzasadnienie – zdania odrębne* [Drafts of the Polish Civil Procedure. Origin – Reason – Dissenting Opinions], Kraków 1930, p. 1; S. Grodziski, *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej* [The Codification Committee of the Second Republic of Poland], *Czasopismo Prawno-Historyczne* [Journal of Law and History] 1981, vol. 1, p. 48; Górnicki, *supra* note 6, pp. 12-13; S. Płaza, *Historia prawa w Polsce na tle porównawczym. Część 3 – okres międzywojenny* [History of the Law in Poland in Comparative Context. Part 3 – Interwar Period], Kraków 2001, p. 476; K. Pol, *Poczet prawników polskich* [The Community of Polish Lawyers], Warszawa 2000, p. 884.

²⁶ L. T., *Procedura cywilna w przyszłym państwie polskim* [Civil Procedure in the Future Poland], *Gazeta Sądowa Warszawska* [Warsaw Judicial Gazette] 1917, no. 26, pp. 289-290.

of the former occupying countries²⁷, but considering academic works and the most important civil procedures in the Europe of that time, including the most recent one, the civil proceedings of the Swiss Canton of Zurich (1913) and the Canton of Bern (1918). The Committee was also interested in Italian (1865)²⁸, Greek (1834)²⁹, and also, though to a very limited extent because of its differing from the continental model, English civil proceedings (1873-1875)³⁰. The comparative background of those works did not mean, though, that the future Code was to be based on a compilation principle. Quite the contrary, it was expected to be a completely new piece of work including the most recent achievements of procedural law jurisprudence.

The principles of the future Polish civil procedure related to the most important procedure institutions, in spite of technical and economic difficulties, were prepared during 67 Warsaw Committee meetings (from 10th March 1917 till 30th January 1918), protocols of which were published in “Kwartalnik Prawa Cywilnego i Handlowego” [Civil and Commercial Law Quarterly] (1917)³¹, and later in “Kwartalnik Prawa Cywilnego

²⁷ A. Stawarska-Rippel, *Trzy transformacje w procedurze cywilnej w Polsce w XX wieku. Wzorce rozwiązań* [Three Transformations in the Civil Procedure in Poland in the 29th Century. Models of Solutions], *Zeszyty Prawnicze* [Journal of Law] 2011, vol. 11.2, p. 354.

²⁸ At the beginning of the 20th century the Italian Code of Civil Procedure (1865) modelled on the French civil procedure was considered obsolete. Therefore drafts of civil procedure reform started to appear: 1920 (G. Chiovenda), 1923 (L. Mortara), 1926 (F. Carnelutti), 1930 (G. Chiovenda), 1936 (E. Redenti), 1937 (A. Solmi). All the drafts failed before Second World War, but they triggered a wide discussion over civil procedure in Italy. The Italian literature concerning civil procedure was considered to be absolutely preeminent in comparison to other European countries. See M. Waligórski, *Proces cywilny i jego nauka we Włoszech* [Civil Procedure and Its Knowledge in Italy], Warszawa 1937, pp. 1-7; Waligórski, *supra* note 18, pp. 26-27; Płaza, *supra* note 21, pp. 492-493; M. Cappelletti, J.H. Merryman, J.M. Perillo, *The Italian Legal System*, Stanford 1967, pp. 50-51. See also C. Calisse, *History of Italian Law*, vol. II, Washington 2001, pp. 791-792.

²⁹ The Greek Code of Civil Procedure (1834) modelled on the French civil procedure – work of Bavarian lawyer Georg Ludwig von Mauer, was in force until 1968. Amendments of this Code were modelled on the Austrian and German civil procedure. See K.D. Kerameus, *Judicial System and Civil Procedure in Greece*, [in:] T. Ansay, J. Basedov (eds), *Structures of Civil and Procedural Law in South Eastern European Countries*, Berlin 2008, p. 122.

³⁰ C.H. van Rhee, *English Civil Procedure until the Civil Procedure Rules (1998)*, [in:] C.H. van Rhee (ed.), *European Traditions in Civil Procedure*, Antwerpen-Oxford 2005, pp. 146-160.

³¹ *Główne zasady*, *supra* note 25, pp. 563-564.

i Karnego” [Civil and Criminal Law Quarterly] (1918)³². Publishing the Warsaw Committee resolution together with extensive commentary was to become the basis for a broad, national, public discussion. The results of the Warsaw Committee work, although called *The Main Principles of Polish Civil Procedure*, constituting a broad preparatory material for the main codifying works and, prepared in a very short time while war was still taking place, in February 1918 were sent to Franciszek Ksawery Fierich, the father of Polish civil procedure studies, to be presented to the Law and Economic Society in Cracow (the Cracow Committee)³³.

In the light of the origin of the general science of the proceedings principles at that time it is worth mentioning that at the very beginnings of the work on Polish civil procedure (1917) it was considered necessary to accept and formulate the proceedings principles *a priori* in order to provide proceedings which would be rational and convenient for the parties and the court.

The proceedings principles, which were defined for the first time by Nikolaus Thaddäus Gönner (1801)³⁴, especially the adversarial principle (*Verhandlungsmaxime*) and inquisitorial principle (*Untersuchungsmaxime*) – which had since been complemented by the principle of the free disposition of the parties (*Dispositionsmaxime*) and by the officiality principle (*Offizialprinzip*) – created two opposite models of civil procedure in the theory of law: adversarial and inquisitorial. In practice neither of them was

³² *Główne zasady polskiej procedury cywilnej. Z prac Komisji przy Departamencie Sprawiedliwości. Część II* [The Main Principles of Polish Civil Procedure. On the Work of the Commission at the Department of Justice. Part II], *Kwartalnik Prawa Cywilnego i Karnego* [Civil and Criminal Law Quarterly] 1918, pp. 563-564.

³³ *Sprawozdanie Komisji wybranej przez Towarzystwo Prawnicze i Ekonomiczne w Krakowie zredagowane przez Xawerego Fiericha, Tadeusza Dziurzyńskiego i Stanisława Gołąb* [The Report of the Commission Chosen by the Law and Economic Society in Kraków, Edited by Xawery Fierich, Tadeusz Dziurzyński i Stanisław Gołab], *Polska Procedura Cywilna* [Polish Civil Procedure], part 1, Kraków 1918, p. 1; Gołab, *supra* note 25, p. 1; Grodziski, *supra* note 25, p. 48; Górnicki, *supra* note 9, p. 12; Płaza, *supra* note 25, p. 476.

³⁴ W. Berutowicz, *Zasada dyspozycyjności w postępowaniu cywilnym* [The Principle of a Free Exercise by the Parties of Their Rights in Civil Proceedings], Warszawa 1957, p. 12; idem, *O pojęciu naczynych zasad postępowania cywilnego* [About Comprehension of Leading Principles of Civil Proceedings], *Studia Cywilistyczne* [Civilistic Studies] 1975, vol. XXV-XXVI, p. 27.

purely brought into being in the modern civil proceedings³⁵. There was and still are inconsistently resolved problems of formulating the catalogue of those rules and defining them. The creator of the procedural rules treated them as prime rules (*maxime*), which, though not directly stated in the act, arise from the essence of a civil procedure and determine its structure. The effect of the first attempt to systematise and prioritise procedural rules by Rabam Freiherr von Canstein, who considered them to be the rational basis of the whole proceedings, became an object of criticism. The statement that was mainly questioned said that the fundamental proceedings principle is justice, which consists of essential procedural principles, especially the principle of the equal rights of parties, of substantive truth, and of the free appraisal of evidence. Other principles, such as orality, directness, publicity, the right to appeal, the rational structure of the law courts, according to R. Canstein, did not come from the principle of justice, but they defined the structure of proceedings for rational reasons. The principles that result from the specific structure of a civil litigation were, according to R. Canstein, the free initiative of the parties, the free disposition of the parties, and the adversarial principle³⁶. Eugeniusz Waśkowski did not agree with him, mainly highlighting that justice is not a principle, but a postulate of civil litigation. Its realisation should be provided by all the constructive principles, and the most important requirement that a civil procedure should comply with is providing rightness (*equitable*) of judgements, their legality, and rationality³⁷. According to E. Waśkowski's concept, which was the first attempt to fully systemise the procedural principles in interwar Poland, the main principles of civil procedure arising from its essence as "unconditional, absolute, basic and elemental"³⁸ were those principle of the free disposition of the parties, the principle of the equal rights of the parties, procedural formalism, and the judge's control over the formal

³⁵ M. Waligórski, *Gwarancje wykrycia prawdy w procesie cywilnym* [Guarantees of the Discovery of the Truth in Civil Proceedings], *Państwo i Prawo* [State and Law] 1953, no. 8-9, p. 262.

³⁶ E. Waśkowski, *System procesu cywilnego. Tom I. Wstęp teoretyczny. Zasady racjonalnego ustroju sądów i procesu cywilnego* [The Civil Process. Vol. I. Introduction. The Theoretical Principles of Rational System of Courts and Civil Procedure], Wilno 1932, p. 104.

³⁷ *Ibidem*, pp. 98, 100, 104.

³⁸ *Ibidem*, p. 100.

course of the proceedings. Those principles, which arose from the essence of the civil procedure did not predetermine if the case was to be oral, written, open, or secret, or who is to gather factual material (evidence) for the proceedings. The issue was quite differently presented by Franciszek Kruszelnicki, who classified as resulting from the essence of the civil procedure the following principles: the principle of accusatorial procedure, the principle of the right to be heard, and the principle of truth that was to be ensured by the principles of officiality, orality, and the direct examination of evidence by the judge, open proceedings, the obligation of the parties to tell the truth, and the free appraisal of evidence by the judge. Other principles were treated as dealing with the external structure of the proceedings³⁹.

Both the Warsaw Committee and the Cracow Committee opted for taking into consideration the active participation of the judge in the civil proceedings, as corresponds with the evolution of civil procedure in Western Europe. In the opinion of the chairperson of the Warsaw Committee, Jan Jakub Litauer, "the judge should not be a machine, satisfied with what the parties say and present; quite on the contrary, the judge should play an active role in the search for the truth; he should go beyond the evidence presented by the parties; indeed, the judge should interfere when he sees the need to complete the material (...) and so the civil proceedings crosses the line over which it is the material truth that is victorious"⁴⁰. In this respect he supported Franz Klein's argument that the very limited activity of a judge is not in keeping with his role and the power of judgement if, for example, the contract is not opposed to good dealing and morals, if the penalty fixed by the contract is not too high, or if there is not a case of exploitation of the weak, etc. Therefore, the opinion of the chairperson were not influenced by habits (local patriotism) resulting from almost seventy years of French civil procedure being in force, and then the Russian procedure, which was to a great extent based

³⁹ See F. Kruszelnicki, *Zasady procesu cywilnego według polskiej procedury cywilnej* [Principles of Civil Proceedings According to Polish Civil Procedure], *Głos Sądownictwa* [Voice of the Judiciary] 1931, no. 9, p. 470.

⁴⁰ J.J. Litauer, *Pogląd ogólny na istotę i rozwój procesu cywilnego* [General View on the Nature and Development of the Civil Proceedings], *Kwartalnik Prawa Cywilnego i Karnego* [Civil and Criminal Law Quarterly] 1919, vol. 2, p. 34.

on the French one. J.J. Litauer recognised that the powers of the judge should be extended so that the right of the free disposition of the parties is retained, though the judge was to cooperate with the parties in order to reach the material truth. The Warsaw Committee therefore adopted a proposal that the civil proceedings should be based on the principles of open proceedings, orality with a part of written form in proceedings and directness (direct examination of evidence by the judge). Furthermore, civil procedure should be an admixture of adversarial and inquisitorial principles with the preservation of the principle of the free disposition of the parties⁴¹.

At the meeting of the Cracow Committee Franciszek Ksawery Fierich followed the opinion of the Warsaw Committee adding some important arguments. He considered that the inquisitorial principle was mainly justified by the need to create civil proceedings adequate to the Polish society at that time, as well as the requirements related to the concentration of procedural material. Gathering procedural materials, facts, and evidence should be an obligation of the parties. However, the judge should be “significantly and spontaneously” involved in that process but satisfied with the formal truth. The regulations of the future Code of Civil Procedure were to be clear and possibly wide⁴². F.K. Fierich was supported by Józef Skąpski, who declared, that independently from theoretical concepts of the aim of the civil proceedings, if it is discovering the truth (Josef Köhler), or giving the parties a chance to obtain that aim (Adolf Wach), such a judicial decision is appropriate which is nearest to the factual truth. The judge should be able to determine the truth in a correct, precise, and complete way, and the inquisitorial principle, which was modified by the necessary postulates of the private law and the resultant autonomy of the parties, serves that purpose⁴³. Only Stanisław Gołąb was against considering the inquisitorial principle: “Today even autonomy has suffered a great deal, today even some civil law experts without hesitation and unblushingly talk about contractual compulsion”⁴⁴. He also claimed that the far-reaching inquisitorial principle does not necessarily contribute

⁴¹ *Główne zasady*, supra note 25, p. 572.

⁴² *Sprawozdanie*, supra note 33, p. 12.

⁴³ *Ibidem*, p. 19.

⁴⁴ *Ibidem*, p. 17.

to establishing the truth in the case: it may lead to delay, which has negative implications in relation to ethical issues.

The postulates regarding the principles of the first Polish Code of Civil Procedure were to become a part of the evolution of civil proceedings in Western Europe. As is well known, the first parent for all modern codes of civil procedures – French civil procedure (1806) perfectly well fitted the liberal principles of the French Civil Code. Based on the principles of formal equality, openness, orality, and directness, the principles of the free disposition of the parties, and the adversarial principle as well as the principle of the free appraisal of evidence, which was called “an old one even when it was born” (Ernest Galsson), was based on the ordinance of 1667, and was the least innovative piece of work of the Napoleonic era⁴⁵. The essential novelties were mainly connected with a new organisation of the administration of justice based on the separation of powers and the independence of the judiciary, the principles of universality and equality⁴⁶. In the legislative motives for the French civil procedure (1806) it was highlighted that the proceedings should be simple, quick, and economically advantageous⁴⁷. The Code was supposed to be “free from any verbiage or unnecessary procedures”⁴⁸. However, under the application of the French Code its disadvantages were quite quickly noticed. The inflexibility of the regulations of the Napoleonic French civil procedure and its over-formality predominated above the substantive aspects of an equitable decision. Widely considered adversarial principle, passivity

⁴⁵ The authors of the draft of the French civil procedure (1806) were lawyers originating from the *ancien régime*: Eustachy Nicolas Pigeau (1750-1818), lawyer, professor, lecturer at l'Ecole de Droit de Paris; Jean-Baptiste Treilhard (1742-1810), politician, senator, Count, Judge at the Court of Cassation (Tribunal de cassation), the President of the Court of Appeal; Antoine Jean Mathieu Séguier (1803-1848), Baron, later the first President of the Tribunal of Appeal in Paris; Thomas Berthereau (1733-1817), President of the Tribunal of Department of the Seine; Bertrand Try, government commissioner. See: A. Engelmann, D.E. Glasson, L. von Stein, R.W. Millar, *France*, [in:] R.W. Millar (translat. and ed.), *A History of Continental Civil Procedure. The Continental Legal History Series*, vol. 7, Boston 1927, p. 750.

⁴⁶ M. Klementowski, *Powszechna historia ustroju* [Common History of Political System], Warszawa 2012, p. 422.

⁴⁷ A. Klimaszewka, *Wizja procedury cywilnej w uzasadnieniach i raportach do projektu Code de procédure civile z 1806 roku* [The Vision of Civil Procedure in the Explanatory Memoranda and Reports to the Draft of Code de Procédure Civile From 1806], *Czasopismo Prawno-Historyczne* [Journal of Law and History] 2014, vol. 1, p. 267.

⁴⁸ Quot. by Klimaszewska, *supra* note 47, p. 267.

of the judge, lengthy *conclusions grossayées*, led to delays in the proceedings increasing their costs⁴⁹.

Those experiences as well as the increasing crisis of liberalism resulted in the French model being considered as insufficient, which in consequence led to a postulate of an active encroachment of the state into the sphere of civil procedure⁵⁰. The civil dispute as a negative social phenomenon blocking part of the national wealth under on-going disputes over property rights required a quick and cheap civil procedure (Franz Klein)⁵¹. It was therefore impossible to leave the course of the proceedings solely to the initiative of the parties, as it was in the French model. In the result, the principle of adversarial procedure was no longer perceived as “battle” between the parties beyond any interference from a public authority. The overcoming of the existing French model by the Austrian civil procedure (1895) marked out the direction of the reforms of civil procedure especially in Germany, Hungary, Yugoslavia, Poland and the Scandinavian countries, Greece, Liechtenstein, Switzerland, and Holland⁵². Activity of the judge, especially in the context of finding factual grounds for judicial decision, in spite of the general rule that presenting the evidence comes under the remit of the parties, is characteristic for nearly all the civil procedure codes in modern Europe⁵³. France also, though quite recently (1975), followed that evolutionary tendency, drawing from the new ideas

⁴⁹ W. Dymek, *Stosunek pisma do słowa w procesie cywilnym na tle przepisów różnych procedur i K.P.C. w szczególności. Część I* [Relation of Writing to Speech in Civil Proceedings Against the Background of the Regulations of the Various Procedures, K.P.C. in Particular. Part I], *Głos Sądownictwa* [Voice of the Judiciary] 1931, no. 10, p. 553. See also Klimaszewska, *supra* note 47, pp. 270-271.

⁵⁰ K. Lutostański, *Z badań nad pierwiastkiem prywatnym i publicznym w procesie cywilnym* [On the Research on the Private and Public Element in Civil Proceedings], Warszawa 1907, p. 15.

⁵¹ W.H. Rechberger, T. Klicka, *Accelerating Civil Litigation in Austria in the Twentieth Century*, [in:] C.H. van Rhee (ed.), *The Law's Delay. Essays on Undue Delay in Civil Litigation*, Antwerpen-Groningen 2004, s. 234.

⁵² Waśkowski, *supra* note 36, pp. 202-205; C.H. van Rhee, *Introduction*, [in:] van Rhee (ed.), *supra* note 30, pp. 13-14; Uzelac, *supra* note 14, p. 288.

⁵³ P. Ryłski, *Działanie sądu z urzędu a podstawa faktyczna wyroku cywilnego* [Ex Officio Activity of a Judge and Factual Grounds of Civil Judgment], Warszawa 2009, pp. 118-148. See also A. Łazarska, *Sędziowskie kierownictwo postępowaniem cywilnym przed sądem pierwszej instancji* [Judge's Management of the Civil Proceedings Before Court of the First Instance], Warszawa 2013, p. 21; B. Karolczyk, *Koncentracja materiału procesowego w postępowaniu cywilnym przed sądem pierwszej instancji* [Concentration of the Material Submitted in Court in Civil Procedure Before Court of the First Instance], Warszawa 2013, p. 96.

of German and Italian jurisprudence, mainly because of two exceptional jurists: Henry Motulsky and Henry Vizioz⁵⁴. The changes that were made at that time were explained by the need to introduce “the air of the 20th century”, so that, within the old and known frames, access to a judge would be less burdensome, the time of the case shorter, and the judge better informed⁵⁵. In order to make the proceedings more efficient, the new French Civil Proceedings Code adopted solutions widening the powers of the judge (court)⁵⁶. Taking that into consideration, the approximation of two great law families – the Romano-Germanic (civil law) and the common law – becomes an interesting phenomenon under the evolution of civil procedure. In the legal literature it was stated that the English reform of Lord Harry Woolf (1998) which aimed at facilitating the proceedings – in the light of the criticism on the traditional English civil justice system, especially the passive role of the judge and the absolute, inviolable adversarial principle – caused even an “evisceration” of the adversarial system⁵⁷.

The re-evaluation of the principles of civil proceedings in the second half of the 19th century in connection with understanding the proceedings in the context of important social functions (*Sozialfunktion*) and the pursuit of the public interest (*Wohlfahrtsfunktion*) were accompanied by changes focusing on accelerating civil proceedings: “it is expedient to highlight the

⁵⁴ L. Cadiet, *The International Sources of French Civil Procedure*, [in:] M. Deguchi, M. Storme (eds), *The Reception and Transmission of Civil Procedural Law in the Global Society*, Antwerpen-Apeldoorn 2008, pp. 267-268; J. Lapierre, *Nowy kodeks procedury cywilnej we Francji* [New Code of Civil Procedure in France], [in:] J. Gudowski, K. Weitz (eds), *Aurea praxis aurea theoria. Księga pamiątkowa ku czci Profesora Tadeusza Erecińskiego* [Aurea Praxis Aurea Theoria. A Commemorative Book in Honour of Professor Tadeusz Ereciński], vol. I, Warszawa 2011, p. 1532.

⁵⁵ Text of the draft (from 1954) of the French Code of Civil Procedure with substantiation in the Polish translation, comes from the unit of an act of the Ministry of Justice in Central Archives of Modern Records in Warsaw. This unit concerns the codification work on the Code of Civil Procedure in People’s Republic of Poland. AAN (Archiwum Akt Nowych – Central Archives of Modern Records in Warsaw), MS (Ministerstwo Sprawiedliwości – Ministry of Justice), signature 2228, pp. 33-35. The draft of the French Code of Civil Procedure of 1954 was the first attempt to reform, which the final stage was in years 1971-1975. A. Wijffels, *French Civil Procedure (1806-1975)*, [in:] van Rhee (ed.), *supra* note 30, pp. 42-44.

⁵⁶ Wijffels, *supra* note 55, pp. 42-44; Lapierre, *supra* note 54, pp. 1534-1535; Rylski, *supra* note 53, pp. 120-126.

⁵⁷ J.A. Jolowicz, *On Civil Procedure*, Cambridge 2000, p. 395; van Rhee, *supra* note 49, p. 22.

common evil, which is prolonged proceedings, causing such a suspicious attitude against exercising jurisdiction”⁵⁸. The principle of the restricted investigative power of judges complemented with their discretionary powers in order to concentrate on the material submitted in proceedings as well as restricting the still “beloved” orality principle served that purpose⁵⁹. The implementation of the postulate to improve and accelerate proceedings and solve the eternal problem in developing a civil procedure which would respond to the postulates of reliability, justice, and procedural economy, and in fact solve the collision of those principles with an appropriate balance, has been a basic issue for civil procedure reformers⁶⁰.

The principle of orality, though it was accepted as one of the main principles of civil proceedings in the 19th-century codes of civil procedure, was implemented in the practice of courts in various ways. It was explicitly illustrated by a loudly dispute between two German lawyers Otto Bähr and Adolf Wach under the applying uniform Code of Civil Procedure (1877) for the whole Second Reich. That dispute had finally proved that civil proceedings cultivating the strictly obeyed orality principle in practice meet a lot of obstacles⁶¹. Supporting an oral and adversarial trial with a solid written foundation, which O. Bähr called for, and a number of discretionary powers of judges, especially those enabling them to reject delayed statements of the parties, were to serve the so called unity of the hearing, which meant the possibility of adjudicating directly after the hearing of the evidence, according to the principle of directness, at a single oral hearing. The oral trial, convenient for the parties, to a greater extent favours finding the truth, settlements, and concentration of evidence and acceleration of the proceedings. It also hinders litigiousness and restricts

⁵⁸ S. Gołąb, *Skupienie i przyspieszenie w procesie cywilnym* [Concentration and Accelerating in Civil Proceedings], Lwów 1937, p. 9.

⁵⁹ Waśkowski, supra note 36, p. 199; Gołąb, supra note 58, pp. 12-15.

⁶⁰ T. Pietrzykowski, B. Wojciechowski, *Równość, prawda i sprawiedliwość w procesie cywilnym. Rozważania na tle nowelizacji k.p.c.* [Equality, Truth and Justice in the Civil Proceedings. Considerations on the Background of the Amendment of k.p.c.], *Palestra* [The Bar] 2004, no. 9-10, p. 11 et seq.

⁶¹ F.K. Fierich, *Nauki wstępne i rzecz o sądach cywilnych, opracował F.K. Fierich* [Preliminary Learning and About Civil Courts, Developed by F.K. Fierich], [in:] A. Bálasits, F.K. Fierich, *Nauka o sądach cywilnych i procedura cywilna* [Study on the Civil Courts and Civil Procedure], vol. I, Kraków 1898-1901, p. 40.

persecutions (A. Wach)⁶². A different approach towards the French civil procedure and, echoing it, the Russian and German approaches was reflected in the Austrian procedure (1895) where the oral trial was based on a wide written foundation⁶³, as was the Hungarian as well (1911)⁶⁴. The most modern civil proceedings of that time – in the Swiss cantons of Zurich (1913) and Bern (1918) emphasised the importance of writing at specific stages of the proceedings⁶⁵.

The idea realised in the breakthrough Austrian Code of Civil Procedure was linked with the obligation to tell the truth (*Wahrheitspflicht*) resulting from the obligation to act in good faith⁶⁶. The Austrian Code did not implement penalties for the parties either for faulty declarations or for the deliberate prolonging of the proceedings. Implementing such penalties (a fine) was proposed by F. Klein, who pointed out that effective control of the proceedings cannot be implemented without a fine for a lie and it should be introduced, even if only to consolidate that obligation in the consciousness of the parties. Contemporarily it has noticed that F. Klein's ideas are relevant to the civil proceedings reform, even today, more than a century later⁶⁷.

The influence of Austrian civil procedure (1895) on the Hungarian regulations was only an inspiration for developing its principles in the Hungarian Code of Civil Procedure (1911)⁶⁸. Given the examples of the Austrian civil proceedings, the Hungarian Code provided for the

⁶² Dymek, *supra* note 49, p. 549–550. See also Wańkowski, *supra* note 36, pp. 144–149.

⁶³ A. Bálásits, *Zasada ustnego postępowania w nowym prawie* [*Principle of Orality in the New Civil Procedure*], *Reforma Sądowa* [Judiciary Reform] 1897, no. 1–2, p. 11.

⁶⁴ F.K. Fierich, *Postępowanie przed sądami okręgowymi* [*Proceedings Before Regional Courts*], [in:] *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Sekcja postępowania cywilnego. Tom I, nr 1 i 2. Polska Procedura Cywilna. Projekty referentów z uzasadnieniem. Przedruk wyczerpanych materiałów* [Codification Committee of the Second Republic of Poland. Civil Procedure Section. Vol. I, no. 1 and 2. Polish Civil Procedure. Speakers' Drafts with Substantiation. Reprint of Used up Edition and Other Materials], Warszawa 1928, vol. 1, pp. 198–199, 203.

⁶⁵ About civil procedure of Zürich (1913) and Bern (1918) see: Fierich, *supra* note 60, pp. 199–202; Dymek, *supra* note 49, p. 556.

⁶⁶ W. Godlewski, *Austriackie prawo procesowe cywilne* [*The Austrian Civil Procedure*], Lwów 1900, p. 63; Bálásits, *supra* note 63, pp. 14–15.

⁶⁷ van Rhee, *supra* note 52, p. 11.

⁶⁸ I. Varga, *Foreign Influences on Hungarian Civil Procedural Law*, [in:] M. Deguchi, M. Strom (ed.), *The Reception and Transmission of Civil Procedural Law in the Global Society. Legislative and Legal Educational Assistance to Other Countries in Procedural Law*, Antwerpen–Apeldoorn 2008, p. 278.

possibility of charging the costs of the delay in resolving the case to the party winning it, if it brought up facts and evidence in order to protract proceedings⁶⁹. A novelty, in comparison to the Austrian regulation, was the possibility of imposing a penalty of a six hundred kroon fine on the party or their attorney for a deliberate delay or a false declaration⁷⁰. The wide range of the judge's control of the proceedings included the possibility, unrestricted by the objection of the parties, of taking evidence *ex officio* that parties invoked even if only in preparatory documents⁷¹.

The regulations of the Hungarian Code (1911) caused a lively interest in the authors of the first Polish Code of Civil Procedure. The Hungarian Code was in the opinion of the President of the Codification Committee – Franciszek Ksawery Fierich, one of the most innovative civil procedures of that time. Moreover this Code was in force over a very small area of Polish territory, although for a very short time – only for 13 months. It covered 13 Spiš villages and 12 Orava villages, on the territory of previous Zalitavia, which belonged to the Kingdom of Hungary till the end of the First World War and was then incorporated into Poland as a result of dividing Spiš, Orava and Cieszyn Silesia between Poland and Czechoslovakia by the decision of the Ambassadors Council in Paris on 28th July 1920.

The Hungarian civil procedure, as well as Swiss canton procedures, especially the Code of Civil Procedure of Zurich (1913) and Bern (1918) played a prominent role in the drafts of the first Polish Code of Civil Procedure⁷². The Code of Civil Procedure of Zurich (1913)⁷³ was a kind of model for civil proceedings in the German-speaking cantons. It provided, similarly to the later civil procedure of Bern canton (1918)⁷⁴, for a broad power of a judge. The aspiration to deliver a judgement on the basis of the real factual state and with no undue delay was reflected

⁶⁹ § 221 Hung. PP (1911).

⁷⁰ § 222 Hung. PP (1911).

⁷¹ § 326 Hung. PP (1911).

⁷² F.K. Fierich, [in:] *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej, Dział Ogólny* [Codification Committee of the Second Republic of Poland, General Section], tome I, vol. 10, p. 274.

⁷³ *Gesetz betreffend den Zivilprozess (Zivilprozessordnung) vom 13. April 1913 mit den seitherigen Änderungen*, Zürich 1951.

⁷⁴ Die Zivilprozessordnung für den Kanton Bern vom 7.08.1918.

in both those Swiss procedures by entitling the judge to take the evidence *ex officio* in order to solve the case and complete unclear statements of the parties⁷⁵. The civil procedures of those cantons, in order to concentrate and accelerate the proceedings, also showed a substantial deviation from the orality principle towards the written form⁷⁶. Similarly to the Hungarian civil procedure, the Zurich civil procedure provided a penalty for deliberate delay of the proceedings by extensive and inessential (restating) in writing statements⁷⁷. Concentration of the evidence and the efficiency of the proceedings, especially in complex cases, in the Zurich procedure were ensured by an original institution, the so called referendary session⁷⁸. To achieve those aims the Zurich civil procedure also used a clause of abuse of procedural rights. The parties were not allowed to implement deliberately unjustified cases and enforce their rights through illicit means. The parties were obliged to tell the truth. Conducting the dispute in bad faith and in a litigiousness manner was punishable by a disciplinary penalty⁷⁹. The procedure of the Swiss canton of Bern prohibited the parties and their representatives from deliberately distorting the truth, or unfairly denying and deliberately delaying the proceedings⁸⁰. The specifics of the Swiss legal system, legal particularism caused by the wide legislative competences of cantons since 1815 and later preserved in the Constitution of 1848, made Swiss law an important subject for comparatists. Despite remaining in two basic impact zones of French and German-Austrian laws, the Swiss codes were based more on the legal *acquis* of cantons than on French or German laws⁸¹. The popular opinion of cultural independence,

⁷⁵ § 166 Zürich. ZPO (1913); Article 214 Bern. ZPO (1918).

⁷⁶ Dymek, *supra* note 49, p. 556.

⁷⁷ § 154 Zürich. ZPO (1913).

⁷⁸ § 146-149 Zürich. ZPO (1913). See also Fierich, *supra* note 64, p. 202; W. Dymek, *Stosunek pisma do słowa w procesie cywilnym na tle przepisów różnych procedur i K.P.C. w szczególności. Część II [Relation of Writing to Speech in Civil Proceedings Against the Background of the Regulations of the Various Procedures and K.P.C. in Particular. Part II]*, *Głos Sądownictwa [Voice of the Judiciary]* 1931, no. 11, p. 606.

⁷⁹ § 90 Zürich. ZPO (1913). See also J. Skąpski, *Postępowanie. Część ogólna [Proceedings. General Part]*, [in:] *Komisja Kodyfikacyjna*, *supra* note 64, p. 168.

⁸⁰ Article 42 Bern. ZPO (1918). See also K. Petruszewicz, *Zwrot ku pierwiastkowi publicznemu w procesie cywilnym [Towards to the Public Element in Civil Proceedings]*, *Rocznik Prawniczy Wileński [Vilnius Yearbook of Law]* 1928, vol. II, p. 166.

⁸¹ P. Oberhammer, T. Domej, *Germany, Switzerland, Austria (CA. 1800-2005)*, [in:] van Rhee (ed.), *supra* note 30, p. 125.

in spite of multiculturalism and being of the influence of the neighbouring countries for ages⁸², made Switzerland a consolidation concordat democracy realising minority rights⁸³. Those tendencies were sustained in the uniform Swiss Civil Procedure Code⁸⁴.

The civil procedure of the Swiss canton of Bern (1918) was particularly interesting for the Chairman of the Codification Committee of the Second Republic of Poland, mainly because of its being built on the theoretical concept of civil proceedings as a legal relationship. The civil procedure of the Swiss canton of Bern (1918) directly adopted this notion as a statutory term (*Prozessvoraussetzungen*)⁸⁵. This concept was also the underlying idea of the draft of Polish Code of Civil Procedure, which was from the point of view of the father of Polish civil procedure jurisprudence a public tripartite legal relationship.

In the draft of F.K. Fierich the main point, “the spine of the structure of civil proceedings”⁸⁶ was to be an obligatory reply to the statement of claim, generally based on Bern civil procedure (1918)⁸⁷. Interestingly, that construction, thoroughly prepared and then discussed at the section of civil proceedings of the Codification Committee of the Second Republic of Poland, was an inspiration for the amendment (1925) of a Romanian civil procedure of 1865⁸⁸ based originally on the Code of Civil Procedure of the Swiss canton of Geneva (Code Bellot, 1819), which was based on French civil procedure⁸⁹. Polish codifying works also stressed the advantages of the Code of Civil Procedure of the canton of Bern, which in a hundred

⁸² K. Sójka-Zielińska, *Stulecie kodeksu cywilnego szwajcarskiego* [*The Century of the Swiss Civil Code*], *Czasopismo Prawno-Historyczne* [Journal of Law and History] 2012, vol. LXIV, no. 2, p. 29; M. Aleksandrowicz, *System prawny Szwajcarii. Historia i współczesność* [*The Legal System of Switzerland. History and the Present Day*], Białystok 2009, pp. 207-209.

⁸³ A. Porębski, *Wielokulturowość Szwajcarii na rozdrożu* [*Multiculturalism Switzerland at a Crossroads*], Kraków 2010, p. 212.

⁸⁴ Ryłski, *supra* note 49, pp. 135-136.

⁸⁵ F.K. Fierich, *Projekty polskiej procedury cywilnej w oświetleniu nauki o stosunku procesowym* [*Drafts of Polish Civil Procedure in the Light of Knowledge of a Procedural Legal Relationship*], *Palestra* [The Bar], Warszawa 1924, p. 2.

⁸⁶ Fierich, *supra* note 64, p. 219.

⁸⁷ Articles 164-167 Bern. ZPO (1918).

⁸⁸ Fierich *supra* note 64, p. 274. The fact that the Polish draft was also known in Romania is mentioned also in Górnicki, *supra* note 9, p. 467.

⁸⁹ S. Spinei, *Romanian Civil Procedure: The Reform Cycles*, [in:] X.E. Kramer, C.H. van Rhee (eds), *Civil Litigation in a Globalising World*, The Hague 2012, pp. 365-366.

and forty three introductory articles covered all the regulations of a general nature. The Zurich code of civil procedure on the other hand included section two (§ 90-108) on the general rules of proceedings (*II Abschnitt. Grundsätze des Verfahrens im allgemeinen*).

The draft of the first Polish Code of Civil Procedure in its general provisions, in the context of the judge's control of the proceedings and his ability to take evidence *ex officio*, was treated more widely than in the Austrian Code and referred to the solutions of the Bern procedure⁹⁰. The author of that part, Józef Skąpski, considered it legitimate to limit that possibility as in the Austrian model and introduce exceptions in the special regulations⁹¹. At the same time he stressed that considering the inquisitorial principle limiting the adversarialism requires taking into account the principle of the free disposition of the parties as much as possible (in terms of the bringing, limitation, abandoning, and withdrawal of an action, settlement, etc.) with the least tincture of officiality⁹². A proponent of taking into account the inquisitorial principle in a wider scope than J. Skąpski was J.J. Litauer, the author of the part on evidence (Title on evidence) in the draft of the first Polish Civil Proceedings Code⁹³. It should be stressed that the original and innovative draft of J.J. Litauer referred in the largest number of articles to the solutions of the Bern and Hungarian civil procedures, which largely considered public element. In the remaining part the draft derived most from the Austrian civil procedure and least from the Russian and French ones.

In relation to the scope of the orality principle J. Skąpski proposed joining it with the written form in order to concentrate the procedural evidence and make an appropriate preparation for the oral hearing. The motions submitted before the hearing were to be in writing. Following the Austrian regulations he proposed that lengthy legal considerations in the preparatory documents were unacceptable, and the court was allowed

⁹⁰ Skąpski, *supra* note 79, p. 135.

⁹¹ *Ibidem*, p. 172.

⁹² *Ibidem*, p. 170.

⁹³ Article 10 of the draft of J.J. Litauer Title on evidence: "The Judge may order, *ex officio*, to exhibit or take evidence, even those not requested by the parties, if, due to their statements or files of the case the judge becomes aware of such evidence, and it can help to clarify the circumstances of the case".

to reject such documents except the ones for which failure to lodge them determines failure to comply with the time limit, which he considered to be too excessive for the parties. Skąpski's draft provided, following the Hungarian mode as well as the Zurich one, the possibility of imposing a fine on the party or its representative for deficiencies in this respect⁹⁴. The discretionary power of a judge was supposed to become the most efficient means to "eradicate litigious graphomania"⁹⁵. Until the completion of the hearing the parties were allowed to present new circumstances and evidence. In order to concentrate the procedural evidence the court could (though it did not have to) ignore the statements and evidence consideration of which would require postponing the trial if the party brought them in order to delay⁹⁶. Such "strongest concentration means"⁹⁷ were complemented with the possibility of imposing on the party an obligation to bear the costs of any delay which was caused by them, no matter what the outcome of the judicial procedure was⁹⁸. In the opinion of F.K. Fierich, the example of the discretionary power of a judge that was formed by the French judiciary, not dealt with by any provision of the Code of Civil Procedure (1806), in extensive interpretation of Article 342 and 343 of that Code, reflected the essence of that issue: that the judge is the natural regulator of the procedural mechanism and decides the way of execution and the success of applying the provisions and main principles of procedural law in practice⁹⁹. The consequences of the proposed discretionary powers of a judge were supposed to be moderated by the possibility of taking evidence *ex officio*, and first of all, introducing the appeal *cum beneficio novorum*¹⁰⁰. The system of discretionary power of a judge, prepared by J. Skąpski and preferred by F.K. Fierich, providing

⁹⁴ Skąpski, *supra* note 79, p. 127.

⁹⁵ *Ibidem*, p. 149.

⁹⁶ *Ibidem*, p. 132.

⁹⁷ F.K. Fierich, *Środki skupienia materiału procesowego według projektu kodeksu polskiej procedury cywilnej* [Means of Concentration of the Procedural Material in the Draft of the Polish Civil Procedure], Kraków 1928, pp. 10-11.

⁹⁸ S. Gołąb, *Koszta procesowe* [Costs of Civil Proceedings], [in:] *Komisja Kodyfikacyjna*, *supra* note 64, pp. 77-78.

⁹⁹ F.K. Fierich, *O władzy dyskrecyjnej sędziego w ustnym postępowaniu cywilnym jako środku skupienia materiału procesowego* [On Discretionary Power of the Judge in the Oral Procedure as the Means of Concentrating the Procedural Material], Kraków 1891, p. 35.

¹⁰⁰ Fierich, *supra* note 97, p. 14.

flexibility and concentrating the procedural evidence, originating from the Anglo-Saxon system¹⁰¹, during further works on the draft of the first Polish Code of Civil Procedure was modified, changed and finally not included in the Code.

Imposing the obligation of telling the truth on the parties was at that time one of the most controversial issues at the Codification Committee of the Second Republic of Poland. J. Skąpski supported the Hungarian and Swiss solutions. The parties were obliged to present in the specific terms the current status of the case in accordance with the truth and accordingly make statements. Any deficiencies in this respect, as J. Skąpski suggested, and according to the Zurich model, should be penalised by a fine imposed on the party or their representative for intentional and flagrant distortion of the current status, either by made up statements, invented evidence or unfounded denial¹⁰². Such a solution related to F. Klein's unrealised postulate¹⁰³, was also unrealised in the Polish Code of Civil Procedure.

The referees of the draft of first Polish Code of Civil Procedure were less interested in the provisions of the German and Russian civil procedures. The reforms of German civil procedure of 1924-1933 corresponded to general trends in the changes in civil procedure. However, in the German doctrine of the 1930s appeared statements negating the existence of the right to judicial protection (right to a judicial decision on the merits), quite characteristic for totalitarian systems¹⁰⁴. The amendment of 13th May 1924 was characterised by the tendency to accelerate proceedings by simplifying the forms in proceedings and countering procedural delay, as well as limiting the adversarial principle powers of a judge, which brought German and Austrian solutions closer together¹⁰⁵. The limited scope of the discretionary powers of a judge relating to the possibility of concentrating the procedural evidence was

¹⁰¹ Karolczyk, *supra* note 53, p. 120.

¹⁰² Skąpski, *supra* note 79, p. 133.

¹⁰³ Oberhammer, Domej, *supra* note 81, pp. 121-122.

¹⁰⁴ Gołąb, *supra* note 58, p. 8.

¹⁰⁵ M. Koszewski, *Niemiecka nowela do procedury cywilnej z dnia 13 maja 1924* [German Amendment to Civil Procedure from 13 May 1924], *Czasopismo Adwokatów Polskich* [The Polish Advocates Review] 1929, vol. 10-12, p. 95.

widened and strengthened¹⁰⁶. According to the amended provisions (1933), the court was permitted to reject evidence and the party's statements if they had not been presented previously in the preparatory procedural document. The amendment of 1933 introduced the obligation of truthfulness¹⁰⁷. The parties were obliged to submit full and true explanations, whereas the court was obliged to ensure that the parties presented the evidence to support their statements. In Russia, on the other hand, the adversarial principle in the view of the Act of 1864 was supposed to guarantee that the courts, especially in the first few years of applying it, did not "get off course" onto the gathering evidence and explanations as in a former days¹⁰⁸. The power of the judge in his control of the proceedings both before the district courts as well as the justice of the peace courts was just slightly widened by an amendment of 15/18 June 1912 with effect from 1/14 January 1914¹⁰⁹. The novelty lay in the possible obligation to pay a fine for negligence (delay) to the opponent, on his motion, by the negligent party¹¹⁰. By this amendment the rural courts (*волостной суд*) were reorganised and the separation between judiciary and administration – which was the cornerstone of the reform of 1864 and at that time was received with great enthusiasm – was restored¹¹¹. In practice, before the amendment of 1912, the functioning of the rural courts for

¹⁰⁶ A. Engelmann, R. Herrman, R.W. Millar, J.Ch. Schwartz, *Germany and Austria*, [in:] R.W. Millar (translat. and ed.), *A History of Continental Civil Procedure. The Continental Legal History Series*, vol. 7, Boston 1927, p. 619; Dymek, *supra* note 73, p. 606; Koszewski, *supra* note 100, p. 97.

¹⁰⁷ B. Stelmachowski, *Zagadnienie przyspieszenia postępowania w polskiej i niemieckiej procedurze cywilnej* [The Issue of Accelerating Proceedings in Polish and German Civil Procedure], *Polski Proces Cywilny* [Polish Civil Procedure] 1936, no. 24, p. 739.

¹⁰⁸ *Ustawa postępowania sądowego cywilnego z dnia 20 listopada 1864 r. ze zmianami zaprowadzonymi przez najwyżej zatwierdzone postanowienie z dnia 19 lutego 1875 r. i z objaśnieniami ułożonymi przez Władysława Nowakowskiego* [The Act of Civil Procedure of 20 November 1864 with Changes Approved by the Decision of 19 February 1875 and with Explanatory Arranged by Władysław Nowakowski], Warszawa 1878, vol. 1, p. 101.

¹⁰⁹ Article 81¹, Article 82¹, Article 366¹, Article 366² Russ. UPC (1864). See also H. Konic, *Zmiany proceduralne w ustawie postępowania cywilnego wprowadzone w r. 1913 w Królestwie Polskim* [Changes in the Act of Civil Procedure from 1913 Introduced in the Kingdom of Poland], Warszawa 1914, p. 11.

¹¹⁰ Article 331¹ Russ. UPC (1864). See also Dymek, *supra* note 44, p. 606.

¹¹¹ Konic, *supra* note 109, p. 3; S. Plaza, *Historia prawa w Polsce na tle porównawczym. Część II – Polska pod zaborami* [History of Law in Poland in Comparative Perspective. Part II – Poland under Occupation Powers], Kraków 2002, pp. 149-150, 201; Klementowski, *supra* note 46, p. 563. See also H.J. Berman, *Justice in the USSR*, Cambridge 1978, p. 212.

peasants and the judicial power of governor of the local gentry resulted in judiciary and administration being still joined together.

In the course of further work on the draft of the first Polish Code of Civil Procedure, many pioneering, innovative, and original ideas and concepts created on the basis of a wide comparative background were to some extent suppressed in the Codification Committee itself, however further distortion appeared during ministerial works. Not taking into account innovative institutions by the codifiers of the first Polish Code of Civil Procedure was the result of trying to preserve “a golden mean”, which was perceived to exist, though inconsistently, in the Austrian civil procedure. The changes, which were implemented later, at the ministry stage, were characterised by approximating the regulations of the Code of Civil Procedure with the Russian solutions under the pressure of lawyers from the former Congress Kingdom of Poland – in those days the local patriotism appeared to be the strongest.

3. AFTER THE SECOND WORLD WAR

Decodification of the civil proceeding in People's Poland (1950)¹¹² essentially consisted of transforming its existing principles, and mainly of moving away from the traditional perception of civil procedure as the public one (*ius publicum*), but at the same time focusing on the protection of private (civil) rights. A propaganda statement in Socialist doctrine about the convergence of interests of an individual and the state distorted the essence of the right to judicial protection (the right to judicial decision on the merits). In a Socialist country the protection could not have been given to an individual if it was not in accordance with peculiarly understood social (collective) interest¹¹³. Challenging the autonomy of the parties' will and restricting the principle of the free disposition of the parties in reality meant the reconstruction

¹¹² Supra note 2.

¹¹³ W. Berutowicz, *Funkcja procesu cywilnego w oświeceniu nauki o tzw. prawie skargi* [Function of Civil Proceedings in the Light of the Science of So-called Right of Action], [in:] *Księga pamiątkowa ku czci Kamila Stefki* [A Commemorative Book in Honour of Kamil Stefko], Warszawa-Wrocław 1967, p. 25.

of the civil law much more than the procedural law¹¹⁴. Even Eugeniusz Waśkowski wrote in the first Polish system of civil procedure (1932) that the principle of the free disposition of the parties belongs to irrespective ones, and its ruthlessness consists of the fact that its breach by legislation would have no real importance and would be pointless from the point of view of the essence of the civil procedure¹¹⁵. In Socialist law it was common to marginalise the private law on behalf of the administrative and economic laws¹¹⁶. In the terms of civil procedure, according to Marx's theory of a trial – that "law and a trial are so closely linked together as e.g. the forms of animals are linked with their body and blood, so that one and the same spirit has to animate the trial and the acts, as the trial is only a form of the act's life, thus the indication of its internal life"¹¹⁷ – tipping the balance in favour of the principles closer to administrative procedure, such as the inquisitorial principle, and broadening the scope of non-litigious proceedings ensued. Comparing the legislative achievements of the Ministry of Justice in People's Poland for 1949 it was written that: "non-litigious proceedings, which are favoured by post-war legislature, even at the expense of the customarily established scope of non-litigious proceedings, were introduced to a large extent"¹¹⁸.

As the model for the Polish Act of 20th July 1950, in which a significant reform of the principles of the first Code of Civil Procedure (1930) took place, served Soviet law, which was stressed by the authors of this amendment who carried out the works within the structures of the Ministry of Justice¹¹⁹. The contents of the Act of 20th July 1950 already included new concepts of Soviet doctrine that were formulated in the context of the criticism of the first Soviet Code of Civil Procedure (1923), which to some extent referred to European tradition and an earlier Act on the civil proceedings (1864), although it also included Soviet innovations.

¹¹⁴ K. Piasecki, *Orzekanie ponad żądanie w procesie cywilnym* [Adjudicating Beyond Request in Civil Proceedings], Warszawa 1975, p. 12.

¹¹⁵ Waśkowski, *supra* note 36, p. 107.

¹¹⁶ A. Stawarska-Rippel, *Państwowy arbitraż w ZSRR* [The State's Economic Arbitration in the USSR], *Miscellanea Historico-Iuridica* 2009, vol. VII, pp. 143-160.

¹¹⁷ K. Marks, F. Engels, *Dzieła wybrane* [Selected Works], Warszawa 1949, vol. II, p. 482.

¹¹⁸ AAN (Archiwum Akt Nowych – Central Archives of Modern Records in Warsaw), MS (Ministerstwo Sprawiedliwości – Ministry of Justice), signature 5580, p. 4.

¹¹⁹ Stawarska-Rippel, *supra* note 4, pp. 168-181, 325-332.

This Code in the late 30s was perceived as anachronistic, which led to many, often incompatible, amendments. The discrepancy between the first Code of Civil Procedure RSFSR and the amendments became deeper when the Stalin constitution (1936) and the new Act on the common Court System of the 16th August 1938 came into force¹²⁰.

The first Code of Civil Procedure RSFSR (1923) provided for the obligation imposed on the court to attempt by any means to explain actual law and the mutual relationship of the people concerned¹²¹. Interestingly, it did not include the obligation of truthfulness, which was adopted, in accordance with the principle of objective truth, by the majority of the people's democracies. The Soviet theorist S.N. Abramov stated that in the absence of a provision providing for the obligation to tell the truth, as it was only a moral one, it was not an obligation of the parties¹²². He was argued with by A.F. Klejman, who derived the obligation to tell the truth from Article 130 of the Stalinist constitution: "that obligation of parties in the Soviet civil proceedings results from the basis of the Soviet Socialist system, in which an honest citizen should not lie to his Socialist state and its organ"¹²³. In the Soviet civil proceedings the parties were obliged, though, to use all granted procedural rights in good faith. Any abuse in this matter was supposed to be immediately suspended by the court¹²⁴. The clause on the abuse of procedural rights served the purpose of addressing the delay in the proceedings, which widely included the orality principle making it at the same time accessible for a citizen. The construction dealing with the abuse of procedural rights appeared in Soviet law quite early, in comparison to the procedural legislation of Western Europe, which raises associations with the codes of civil procedure in the cantons of Zurich (1913) and Bern (1918). Similarities, and even a statement about an obvious following of them in the first Soviet Code of Civil Procedure (1923) were noted in the Polish inter-war legal literature¹²⁵, as well as in the

¹²⁰ D.W. Chenoweth, *Soviet Civil Procedure: History and Analysis*, Philadelphia 1977, pp. 31-33.

¹²¹ Article 5 RSFSR GPK (1923).

¹²² С.Н. Абрамов (ed.), *Гражданский процесс [Civil procedure]*, Moscow 1948, p. 93.

¹²³ Quot. by Абрамов, *supra* note 122, p. 92.

¹²⁴ Article 6 RSFSR GPK (1923).

¹²⁵ Petrusiewicz, *supra* note 80, p. 164 et seq.

Western literature¹²⁶. Also in terms of reducing the adversarial principle and striving to discover the substantive truth, the Soviet provisions in the Code of Civil Procedure RSFSR (1923) did not differ significantly from the general tendency of reforming civil proceedings in Western Europe countries¹²⁷. In accordance with the Code (1923), which contained the rule of repartition of the burden of proof following the Russian Act on civil procedure (1864), the burden of adducing the proof and proving was on the parties¹²⁸.

The difference lay in the fact, that the classical coverage of adversarialism was in the Soviet doctrine fractured and formed in such a way as not to become an obstacle in the realisation of the peculiarly understood principle of the objective truth, corresponding with the assumptions of the Marxist theory of cognition, which concluded that the truth in the proceedings is achievable. *Ipso facto* the Soviet doctrine denied contrary of the absolute (objective) truth and a relative (formal) truth¹²⁹. Supremacy of the objective truth principle, as supreme over other procedural principles, was commonly accepted in the Socialist doctrine of civil procedure¹³⁰.

In terms of the principle of the free disposition of the parties, the Code of Civil Procedure RSFSR (1923) did not provide the possibility of deciding beyond the claim in the proceedings before the court of the first instance, except in those cases in which the size of the claim had not been earlier settled by the agreement of the parties or was not determined by law (a bill, a contract, rates)¹³¹. The withdrawal of an action was at the discretion

¹²⁶ A.W. Rudzinski, *Soviet-Type Audit Proceedings and Their Western Counterparts*, [in:] L. Boim, G.G. Morgan, A.W. Rudzinski, *Legal Controls in the Soviet Union. Law in Eastern Europe. A Series of Publications Issued by the Documentation Office for East European Law University of Leyden*, no. 13, Netherlands 1966, pp. 287-335.

¹²⁷ K. Grzybowski, *Soviet Legal Institutions. Doctrine and Social Functions*, Ann Arbor 1962, p. 105.

¹²⁸ Article 118 RSFSR GPK (1923).

¹²⁹ J. Klich-Rump, *Podstawa faktyczna rozstrzygnięcia sądowego w procesie cywilnym* [Factual Grounds of a Judgment in Civil Proceedings], Warszawa 1977, pp. 117, 119.

¹³⁰ H. Mądrzak, *O pojmowaniu naczelných zasad postępowania cywilnego* [On Comprehension of Leading Principles of Civil Proceedings], [in:] E. Łętowska (ed.), *Proces i prawo. Rozprawy prawnicze. Księga pamiątkowa ku czci Profesora Jerzego Jodłowskiego* [Proceedings and Law. Law Treatises. A Commemorative Book in Honour of Professor Jerzy Jodłowski], Wrocław 1989, p. 395.

¹³¹ Article 179 RSFSR GPK (1923).

of the court in all matters¹³². Only the Fundamentals of Civil Procedure of the USSR and Union Republics (1961) and the second Code of Civil Procedure RSFSR (1964) emphasising – *expressis verbis* – collective (public) interest, introduced a general rule that the court was not bound by the limits of a claim¹³³. The restriction of the free disposition of the parties' principle in the first Code of Civil Procedure RSFSR (1923) manifested itself in the competences of the prosecutor, who was entitled to bring an action as well as join to civil lawsuit at every stage of civil proceedings, if in the prosecutor's opinion the protection of the state or working class's interests required such an action¹³⁴.

The essential Socialist innovations appeared in the Soviet civil procedure at the time of the recodification of the Soviet law (1961-1964). Notably, the tasks (objectives) of civil proceedings were set, according to which rulings of the civil courts had to protect the Socialist economic system and Socialist ownership as well as the social, economic, political, and individual rights of citizens that were guaranteed by the USSR constitution, and the public interest of undertakings, institutions, organisations, collective cooperative farms, and other organisations. What is more, the civil procedure should have strengthened the Socialist rule of law, and educated the citizens in the spirit of Soviet law and rules, and ensure Socialist co-existence¹³⁵. The Code of Civil Procedure RSFSR (1964) allowed for the possibility of participation by representatives of the State, public organisations, and employees (workers) in the civil proceedings¹³⁶. The courts were to show initiative in notifying them of civil litigations with a social (public) element. Engaging society in civil cases aimed at providing the functions of law as “educator” and “protector” in forming a model Soviet citizen¹³⁷.

The assumption of the work on the new (second) Polish Code of Civil Procedure that was started by the Codification Committee appointed by the decree of the President of the Council of Ministers of 23rd August

¹³² The third and fourth sentence of Article 2 RSFSR GPK (1923).

¹³³ Article 195 RSFSR GPK (1964).

¹³⁴ Article 2 RSFSR GPK (1923).

¹³⁵ Article 2 RSFSR GPK (1964).

¹³⁶ Article 147 RSFSR GPK (1964).

¹³⁷ W.E. Butler, *Soviet Law*, London 1983, pp. 297-298.

1956¹³⁸ was to start them from the very beginning, so as not to continue a failed and politically controlled project such as the ministerial draft of 1955. Zbigniew Resich, the Chairman of the Civil Division at the Supreme Court at that time, was appointed Chairman of the Second Unit to prepare the draft Code of Civil Procedure within the Civil Division of the Codification Committee of the People's Republic of Poland. An outstanding jurist of wide interests, a member of the United Nations Commission on Human Rights, co-author of International Covenants on Human Rights, a professor associated with Warsaw University, although he started his career at the Jagiellonian University, where he received his doctorate¹³⁹, he is listed among the most prominent academics of the traditional Cracow school, guarding the continuity and stability of legal institutions¹⁴⁰. The main referee of the draft was a judge of the Supreme Court, also in the inter-war period, Marian Lisiewski. At the inaugural session of the Codification Committee, M. Lisiewski bravely stated that the subjects of civil proceedings were side-lined from the position of the subject of the civil proceedings onto the position of a mere participant, who does not have a decisive influence on the proceedings itself. It significantly altered the aim of the civil proceedings, in which two equal subjects lead a dispute about the law¹⁴¹. The restriction of the party's (an individual) rights, characteristic of the implemented changes, had an impact on civil procedure principles. M. Lisiewski expressed the need to highlight the principle of the free disposition of the parties and the adversarial principle more. He strongly criticised the prosecutor's powers in civil proceedings, who in all instances was entitled,

¹³⁸ About the origin, organisational structure and works proceedings of Codification Committee in People's Republic of Poland see Fiedorczyk, *supra* note 21, pp. 285-300.

¹³⁹ *Profesor Zbigniew Resich i jego działalność* [Professor Zbigniew Resich and His Activity], [in:] M. Jędrzejewska, T. Erciński (eds), *Studia z prawa postępowania cywilnego. Księga pamiątkowa ku czci Zbigniewa Resicha* [Studies of Civil Procedural Law. A Commemorative Book in Honour of Zbigniew Resich], Warszawa 1985, pp. 7-10; A. Bielecki, *Zbigniew Resich 1915-1989*, [in:] G. Bałtruszajtys (ed.), *Profesorowie Wydziału Prawa i Administracji Uniwersytetu Warszawskiego 1808-2008* [Professors of the Faculty of Law and Administration of Warsaw University 1808-2008], Warszawa 2008, pp. 293-295.

¹⁴⁰ Sawczuk, *supra* note 23, p. 168.

¹⁴¹ M. Lisiewski, *Podstawowe problemy struktury nowego postępowania cywilnego* [Primary Problems of the Structure of the New Civil Proceedings], *Nowe Prawo* [New Law] 1957, no. 3, p. 12.

not only to defend the law, but also to act as a subject bringing an action in all cases and gathering procedural material (evidence), which undermined the individual's autonomy and also the principle of the equal rights of the parties. The necessity to verify and discuss again the issue of the participation of a prosecutor in the civil proceedings was also stressed in the inaugural speech for the Codification Committee of the People's Republic of Poland the minister of justice Zofia Wasilkowska¹⁴².

The problem of principles for the future code was discussed on the basis of Z. Resich's lecture entitled: "The principle of a free exercise by the parties of their rights and the adversarial principle in the civil proceedings of the People's Republic of Poland" presented at the session, 21st February 1957, of the Codification Committee's Civil Procedural Law Unit¹⁴³. The assumption of the lecture was an objective analysis and critique of the former legal science and practice acquis both in the capitalist as well as in the socialist law. Z. Resich in the first place stressed the public (social) role of civil proceedings and the need to seek the truth in it, which was linked with the problem of defining the borders of implementing that postulate. He justified accepting such an assumption by the general direction of civil proceedings evolution with reference to the drafts of the first Polish Code of Civil Procedure (1930). He also proposed including a regulation expressing the (objective) truth principle in the Preliminary Provisions in the General Part of the Code. He referred to the solutions of the Czechoslovak (1950) and Bulgarian (1952) codes, though he regarded their regulations as excessive.

The Czechoslovak Code of Civil Procedure (1950) provided that the court comprehensively ensures the determining of the actual status and by just rulings was to strengthen the "Socialist rule of law" and educate citizens so that they would exercise reasonable citizenship¹⁴⁴. The parties were obliged to present to the court facts to support their notions and full

¹⁴² Z. Wasilkowska, *Zadania Komisji Kodyfikacyjnej* [Tasks of the Codification Committee], *Państwo i Prawo* [State and Law] 1957, no. 1, p. 9.

¹⁴³ Z. Resich, *Zasada dyspozycyjności i kontradiktoryjności w procesie cywilnym PRL* [The Principle of a Free Exercise by the Parties of Their Rights and Adversarial Principle in Civil Proceedings of People's Republic of Poland], *Państwo i Prawo* [State and Law] 1957, no. 7-8, pp. 56-69.

¹⁴⁴ § 1(2) Czech. OSP (1950).

and true explanations¹⁴⁵, which were completed by the possibility of providing evidence not presented by the parties *ex officio*¹⁴⁶. “Omnipotent paternalism”, connected with accepting as superior the objective truth principle, expressed itself in the obligation of the court to provide the parties with all the necessary guidelines (indications) regarding procedural steps and advise them about legal consequences of their acts and omissions¹⁴⁷. The Bulgarian Code of Civil Procedure (1952), on the other hand, provided that the court should actively participate in the full investigation and disclosure of the real rights as well as establishing the interrelations of the parties¹⁴⁸. The court was to help the parties in exercising the actions required by the law in order to prevent damage to their interests caused by ignorance of the law, illiteracy, or due to other reasons. The court could *ex officio* collect evidence, and also investigate the evidence which had already been gathered and presented¹⁴⁹. The Bulgarian Code of Civil Proceedings (1952) included, similarly to the first Soviet Code (1923), a provision on the abuse of procedural rights. According to it, the parties, and their representatives, were obliged to use the procedural rights in good faith and “with respect for Socialist co-existence rules”. What is more, the parties should have presented facts and explanations in accordance with the truth¹⁵⁰. It is also worth mentioning, that the Bulgarian Code (1952) was exceptional owing to its strong tendencies towards consent judgement in civil proceedings¹⁵¹, which had been respected in accordance to the previous Bulgarian code of 1892, based on the French model and accepted in the Russian Act on civil proceedings (1864). In the literature, it was highlighted that at the time of the work

¹⁴⁵ § 60 Czech. OSP (1950).

¹⁴⁶ § 88(2) Czech. OSP (1950).

¹⁴⁷ § 7 Czech. OSP (1950).

¹⁴⁸ Article 4 Bulg. GPK (1952).

¹⁴⁹ Article 129 Bulg. GPK (1952). See also Cz. Tabęcki, *Dowody i dowodzenie według socjalistycznych procedur cywilnych* [Evidences and Hearing of Evidence According to Socialistic Civil Procedures], *Nowe Prawo* [New Law] 1955, no. 7-8, p. 20.

¹⁵⁰ Article 3 Bulg. GPK (1952).

¹⁵¹ J. Lapierre, *Dążność do ugodowego załatwiania spraw w polskim postępowaniu cywilnym na tle prawnoporównawczym* [Striving for Consent Judgment in Polish Civil Proceedings in the Comparative Background], *Studia Cywilistyczne* [Civilistic Studies] 1975, vol. XXV-XXVI, pp. 137-139.

on the Socialist Bulgarian Code of Civil Procedure there were attempts to sustain the old principles as far as was possible¹⁵².

Z. Resich did not quote the example of the Hungarian Code of Civil Procedure (1952), which in a way close to the traditional solutions, though modified following the Socialist form, provided that: “the tasks of the court, according to the aims of this act, include pursuing the disclosure of the substantial truth”¹⁵³. In order to achieve that, the court *ex officio* was to take measures so that the parties correctly exercised their procedural rights and fulfilled their assigned procedural obligations. The court was obliged to provide the parties with the necessary information and instruct them on their procedural rights¹⁵⁴. The previous obligation of the parties to carry out the proceedings in good faith, without causing deliberate delay, the truthfulness obligation, and inquisitorial elements in the case, which gave the possibility, not restricted by the parties’ objection, of taking *ex officio* evidence that the parties mentioned even if only in the preparatory documents¹⁵⁵, had been strengthened in the Hungarian Socialist Code. The parties were obliged to exercise their procedural rights in a fair way, and the court could not approve of such actions as would cause delay in the proceedings or create obstacles to revealing the substantial truth. The provisions of the Hungarian Code were in this matter very widely elaborated in comparison to other Socialist civil procedures. The court imposed a fine (up to a thousand forint) on the party or their attorney who deliberately or as a result of a gross negligence stated the existence of a fact, which was not in compliance with the reality, or hid a fact, or unjustified submitted any evidence¹⁵⁶. A heavy fine for actions aiming at delaying the trial and untrue statements by the parties contributed to the concentration and accelerating of the proceedings¹⁵⁷. According to the old and sustained rule of the repartition of the burden of proof, the controversial facts were to be proved by this party which interest required to accept them as true.

¹⁵² A. Katzarsky, *Judicial System and Civil Procedure in Bulgaria*, [in:] T. Ansay, J. Basedow (eds), *Structures of Civil and Procedural Law in South Eastern European Countries*, Berlin 2011, pp. 113-114.

¹⁵³ § 3 pkt 1 Hung. PP (1952).

¹⁵⁴ § 3 pkt 1 Hung. PP (1952).

¹⁵⁵ § 222 and § 326 Hung. PP (1911).

¹⁵⁶ § 5 Hung. PP (1952).

¹⁵⁷ § 120 (in relation with § 5) Hung. PP (1952).

Furthermore, the court might have *ex officio* to take evidence regarded as purposeful¹⁵⁸. What is more interesting, the Hungarian Socialist Code of Civil Procedure eliminated evidence obtained by hearing of the parties¹⁵⁹.

Z. Resich proposed to adopt, in the Polish Code of Civil Procedure, not an obligation, but a duty of the court to provide a comprehensive explanation of all the important circumstances of the case and the real legal interrelations and rights of the parties¹⁶⁰. Accepting, as the main one, the truthfulness principle, which in the Socialist civil procedure was called an objective one, did not prejudice how it would be fulfilled. Z. Resich agreed with the idea, that the adversarial principle gives a higher assurance of finding the truth in civil proceedings (E. Wańkowski). The court, though, should be allowed to settle the dispute as accurately as possible and activities of the court restricting the adversarial principle may serve that purpose. Z. Resich also pointed out, as was also noticed by inter-war codifiers, that it is required that the weaker party be protected in proceedings (F.K. Fierich) and that there is a need to protect the public interest from the possibility of a fictitious trial (Maurycy Allerhand¹⁶¹). Z. Resich proposed including an inquisitorial element in the civil proceedings, though limited so that those elements would not excessively dominate it, as was also pointed out by Marian Lisiewski¹⁶². He also referred to the views of Józef Skąpski (senior), who during the inter-war work of the Codification Committee of the Second Republic of Poland proposed introducing, in the first Code of Civil Procedure, the possibility of taking evidence *ex officio*, unless prohibited by the Code. However, he considered it unreasonable to preserve the competences of the court in such a wide scope, as in the revised (1950) Code of Civil Procedure¹⁶³, and the draft of 1955¹⁶⁴. Z. Resich proposed that the court might admit

¹⁵⁸ § 164 Hung. PP (1952).

¹⁵⁹ Tabęcki, *supra* note 149, p. 21.

¹⁶⁰ Resich, *supra* note 143, p. 58.

¹⁶¹ M. Allerhand, *Podstęp w procesie* [Deception in Proceedings at Law], Lwów 1907.

¹⁶² Resich, *supra* note 143, p. 60.

¹⁶³ See *supra* note 2: "Article 236 § 1: The court may admit evidence not even requested by the parties. If necessary, the court may order appropriate investigations".

¹⁶⁴ Article 178 of the draft of the Code of civil Procedure of Polish People's Republic (1955): "The court may *ex officio* admit the evidence not invoked by the parties, even if the parties opposed such evidence, if it is necessary to properly explain the factual circumstances of the case. If necessary, the court orders an appropriate investigation to be conducted".

evidence not presented by the parties, though within the frame of the factual cause of an action put forward by the plaintiff and without unnecessary violation of the parties' private lives¹⁶⁵. The provisions in such a form were supposed to add new content to the adversarial principle by accepting as a rule the initiative of parties in gathering procedural evidence and the obligation of the court to stimulate it and to give the right direction. The court activities *ex officio* were to be an exception.

Z. Resich's proposal was in accordance with the requirement to widen the activities of the parties and restricting the court activities *ex officio*, following the rule *vigilantibus iura sunt scripta*, that appeared later in the doctrine (Mieczysław Sawczuk, László Névai)¹⁶⁶. Following the proposal of Z. Resich, Civil Procedural Law Unit of Codification Committee decided to expose the adversarial principle, allowing at the same time the gathering of evidence *ex officio*, however without the restriction proposed by the Z. Resich. The Civil Procedural Law Unit did not decide to impose upon the court obligations exceeding its objective possibilities, although, it was assumed that withdrawing from the existing competencies of the court in gathering evidence *ex officio* would be contrary to the direction of the evolution of civil proceedings. In this matter, the Swiss solutions (Bern, Zurich), which connected the adversarial principle with inquisitorial elements, were brought up¹⁶⁷. The Procedural Civil Law Unit, in accordance with the referee's postulate, adopted a general rule that the procedural actions of the parties must not have been inconsistent with the "principles of social life", which was strengthened by the obligation to tell the truth. In this way it was intended to harmonise the obligation dealing with legal actions in accordance with the "principles of social life" on the basis of substantive law with procedural law.

In the terms of the principle of the free disposition of the parties, Z. Resich agreed with M. Lisiewski that the right of a prosecutor and other

¹⁶⁵ Resich, *supra* note 143, p. 64.

¹⁶⁶ Z. Resich, *Ocena założeń kodyfikacyjnych kodeksu postępowania cywilnego* [Appraisal of Codification Assumptions of the Code of Civil Procedure], [in:] *Funkcjonowanie kodeksu postępowania cywilnego w praktyce* [The Functioning of the Code of Civil Procedure in Practice], Warszawa-Popowo 1984, pp. 16-17.

¹⁶⁷ W. Siedlecki, *Projekt kodeksu postępowania cywilnego PRL* [Draft of the Code of Civil Procedure of the People's Republic of Poland], *Państwo i Prawo* [State and Law] 1960, no. 3, p. 452.

subjects to bring an action is excessive. He generally opposed creating the possibility of the court interfering with the private lives of individuals. The prosecutor's rights were to be kept within proper limits. He suggested that the court should inform a prosecutor about the pending case, when it deems his participation as necessary – especially, when there is a fear that the trial is fictitious or as a result of unfair defence the interest of the party, the third party or the general public might have been affected¹⁶⁸. According to this postulate the Civil Procedural Law Unit assumed that the prosecutor would be allowed to participate in any pending lawsuit, introducing at the same time as a precondition for their action the “protection of legality”, and not, as had been the case, the “interests of the People's Democracy State”. It was decided, as with the Czechoslovak Code (1950), that the prosecutor should be entitled to take actions leading to initiate the proceedings only in cases defined by the act. The Polish draft provided for such a possibility only in cases concerning nullification of marriage and incapacitation.

According to the Czechoslovak Code (1950) civil proceedings were initiated when requested by the participant (*účastník* – a notion accepted uniformly in the Code instead of “a party”, which reflected an ideological sense of bringing together litigious and non-litigious proceedings)¹⁶⁹ or *ex officio* by the prosecutor when deemed necessary in order to protect the state or the “interests of the working people”. The prosecutor was not, though, entitled to bring an action in all civil cases, but only in those specifically listed in the provisions of law. Prosecutor could also, at any stage, join the proceedings ongoing on the initiative of the parties, exercising their rights¹⁷⁰. “The state interest” and “the interests of the working people”, as guidelines for the actions of the prosecutor on the grounds of civil proceedings, corresponded to a hypertrophy of general clauses which was characteristic of Socialist law. In the Bulgarian Code (1952) the prosecutor's entitlements were wider than those in the

¹⁶⁸ Resich, *supra* note 143, s. 66.

¹⁶⁹ Z. Nový, *Občanské právo procesní* [Civil Procedure], [in:] M. Bobek, P. Molek, V. Šimíček (eds), *Komunistické právo v Československu. Kapitoly z dějin bezprávi* [Communist Law in Czechoslovakia. Chapters From the History of Injustice], Brno 2009, p. 523.

¹⁷⁰ § 6 and § 41 Czech. OSP (1950).

Czechoslovak Code of Civil Procedure (1950)¹⁷¹. The prosecutor was entitled to initiate actions and exercise the rights of the parties in the civil proceedings, not only in the cases clearly prescribed by law, but also when their actions were taken in order to protect substantial (vital) national and public interest. Besides, the prosecutor draws up conclusions with regard to civil cases expressly provided by law or when he deems it necessary¹⁷². The court informed the prosecutor, when his participation was found in the particular case to be necessary¹⁷³. Approval of the agreement in court, when a prosecutor participated in the proceedings as one of the parties, followed the hearing of their opinion¹⁷⁴. The Hungarian Code (1952) provided that the court proceeds to hear the civil litigation only on the basis of a motion (statement of claim) submitted by one of the parties. However, in order to protect the state and the workers' interests, such motion might have been submitted by the prosecutor who could also join the proceedings at any its stage, which made the principle of free disposition of the parties illusory¹⁷⁵.

Zbigniew Resich questioned the validity of the concept of the total autonomy of the parties in the proceedings. He claimed that adjudicating in accordance with the truth has to be connected with the court's control over the dispositive actions of the parties. In his view, the authority of the court did not allow illegal actions to be taken with its approval. He proposed making court control possible, not obligatory, as it was in the draft of 1955, over the dispositive actions of the parties in terms of suit withdrawal, abandoning the claim, change of the claim, and agreement in court, which might have been done owing to a mistake, threat, or exploitation, but also in order to restrict the possibility of procedural fiction. As for the other actions, he regarded the obligation to take them

¹⁷¹ Article 2 Bulg. GPK (1952).

¹⁷² Article 27 Bulg. GPK (1952).

¹⁷³ Article 28 Bulg. GPK (1952).

¹⁷⁴ Article 125 Bulg. GPK (1952).

¹⁷⁵ § 2 Hung. PP (1952). See Varga, *supra* note 68, pp. 279-280; M. Kengyel, G. Czoboly, *Battle Between Individual Rights and Public Interest in Hungarian Civil Procedure*, [in:] A. Uzelac (ed.), *Goals of Civil Justice and Civil Procedure in Contemporary Judicial Systems*, Cham-Heidelberg-New York-Dordrecht-London 2014, p. 210; M. Kengyel, *Węgierskie prawo cywilne procesowe [Hungarian Law of Civil Procedure]*, [in:] E. Smoktunowicz (ed.), W. Graliński (transl.), *Wielka encyklopedia prawa [Great Encyclopedia of Law]*, Warszawa 2000, p. 1129.

in accordance with the “principles of social life” as a sufficient one¹⁷⁶. Restricting the control over the parties’ disposition over their substantive rights only to some claims, as it was in the revised (1950)¹⁷⁷ first Polish Code of Civil Procedure (1930), he believed to be unjustified also in the context of the equality of the parties’ in the proceedings¹⁷⁸.

In the matter of the ability to decide beyond the request, Z. Resich believed that the court should have such ability in special cases; however, it should not change the ground of an action. This possibility should also not be limited to some “favoured” claims. He proposed to accept the provision in the following formulation: “the court may, depending on the circumstances of the case, go beyond the borders of the request presented in the action”¹⁷⁹. Although the assumption for the draft was to continue the efforts to achieve real equality of the parties in the proceedings, Z. Resich’s proposal was not accepted.

In the Czechoslovak Code of Civil Procedure (1950) the court evaluated the dispositive actions of the parties: acknowledging the claim, abandoning the claim, and agreement in court, from the lawfulness and public interest point of view¹⁸⁰. The second Czechoslovak Code of Civil Procedure (1963) introduced the possibility of derogation from the rule *ne eat ultra petita partium* in the proceedings before the first instance. The court, deciding, might have gone beyond the boundaries of the party’s request and adjudge something different (*něco jiného*) or more than it was demanded, but only when the regulations of law provided for such a way of regulating the relationship between the participants¹⁸¹. The Bulgarian Code (1952) and the Hungarian Code (1952) did not provide the possibility

¹⁷⁶ Resich, *supra* note 143, pp. 67-69.

¹⁷⁷ *Supra* note 2, Article 329: “The court has neither the right to decide on the issues, which were not the subject of the claim nor to decide beyond the claim. The provision preceding the paragraph does not apply: 1) when the plaintiff is the State Treasury or any other body subjected to public economic arbitrage, and the claim amount was not defined by a contract or specific provisions, and 2) when the subject of complaint is claims for alimony, labour claim or compensation for any damage caused by tort action”.

¹⁷⁸ Resich, *supra* note 166, p. 17.

¹⁷⁹ Resich, *supra* note 143, pp. 66-67.

¹⁸⁰ § 76 Czech. OSP (1950).

¹⁸¹ § 153 Czech. OSR (1963). See also E. Wengerek, *Orzeczenia sądowe w procedurach socjalistycznych* [Judicial Decisions in Socialist Civil Proceedings], *Studia Cywilistyczne* [Civilistic Studies] 1975, vol. XXV-XXVI, p. 292.

of adjudicating beyond the claim. The Hungarian Code provided that the court was bound by the parties' statements and demands, however, renunciation of rights, which was contradictory to the legitimate interests of the party, should not have been accepted by the court, even in the case when the party insisted on such renunciation¹⁸². The Soviet decomposition of the principle *ne eat iudex ultra petita partium*, fully implemented in the second Soviet Code of Civil Procedure (1964), was followed in a weaker form only in the Polish civil proceedings¹⁸³.

4. FINAL REMARKS

The history of codifying civil procedural law in Poland, not only, though, if one takes into consideration the history of Franz Klein's draft in Austria, presents the phenomenon of a deviation from the assumptions and concepts which were a result of long-term work by experts. Such deviation was usually adverse.

During the interwar period in Poland many pioneering, innovative, and original ideas and concepts created by authors of the drafts of the first Polish Code of Civil Procedure on the basis of a wide comparative background were suppressed. Those ideas, which were innovative and pioneering in the Polish doctrine of procedural law, dealt mainly with the pre-trial proceedings, the abuse of the procedural rights clause, the obligation to tell the truth, the discretionary power of a judge, the rules of evidence proceedings, as well as the construction of an obligatory reply to the statement of claim and default judgment. The necessity of making the civil procedure more flexible as well as making their forms more simple and the amount of regulation more reasonable so that the procedural institutions did not become an inexhaustible source of doubts in theory and practice, along with various other problems discussed within the framework of the civil procedural law by the Codification Committee of the Second Republic of Poland are discussed to this day.

Likewise in the People's Republic of Poland the main thrust of the draft (1960) of the second Polish Code of Civil Procedure was

¹⁸² § 4 Hung. PP (1952).

¹⁸³ Wengerek, *supra* note 181, p. 294.

crushed. In this draft the institution of prosecutor was dismantled as a supreme control factor and the possibility of bringing by him a legal action was limited to a number of cases which were strictly defined in the law. This draft accepting the rule of the parties' initiative in gathering evidence together with obliging the court to boost it, and showing the right directions. In this draft a mechanical consolidation of litigious and non-litigious proceedings was abandoned, the appellate element was included to a greater extent and supervision over final judgements was depoliticised. This draft was later perceived as "too innovative" and changed in accordance with the political principles of that time.

Certainly the causes of that phenomenon – deviation from the assumptions and concepts of experts, are various. In such a context it seems justified to express concern for the solutions of the new (third) Polish Code of Civil Procedure to be of such high quality that they would not be devalued under the influence of *ad hoc* impulses in the course of legislative procedure¹⁸⁴.

THE PRINCIPLES OF THE CODE OF CIVIL PROCEDURE

Anna Machnikowska

1. THE CODE OF CIVIL PROCEDURE OF 1930¹⁸⁵

The first Polish Code of Civil Procedure, adopted on 29 November 1930¹⁸⁶, has been widely considered to be an extremely valuable achievement in Polish legal thinking¹⁸⁷. Particular attention should

¹⁸⁴ T. Ereciński, *Wprowadzenie. O stanie prac nad projektem nowego Kodeksu postępowania cywilnego* [Introduction. About Progress of Work on the Draft of the New Code of Civil Procedure], [in:] K. Markiewicz, A. Torbus (eds), *Postępowanie rozpoznawcze w przyszłym Kodeksie postępowania cywilnego* [Examination of Civil Law Cases in the Future Code of Civil Procedure], Warszawa 2014, p. 9.

¹⁸⁵ The article includes some conclusions previously presented by the author in the article: *50th Anniversary of the Code of Civil Procedure From Far and Near Perspective*, *Kwartalnik Prawa Prywatnego* [The Private Law Quarterly] 2015, vol. 3, p. 551.

¹⁸⁶ The Regulation of the President of the Republic of Poland of 29.11.1930, Dz.U. [Journal of Laws] No. 83, item 651; amended on 27.10.1932, Dz.U. [Journal of Laws] No. 93, item 802; consolidated text – Dz.U. [Journal of Laws] 1932, No. 112, item 934.

¹⁸⁷ On the use of the extensive comparative research of the European achievements of the doctrine of procedural civil law while preparing the Code and their critical analysis,

be focused on the conceptual and legislative works preceding its enactment, which were characterised by a careful and up-to-date analysis of procedural solutions applied in Europe, as well as the substantive discussions that took place in the Codification Committee and among the representatives of the legal professions. Another interesting issue is the model of the principles of civil procedure (which was finally implemented and partly corrected by the Ministry of Justice) as well as its functioning in practice. The authors of the Code used their personal experience of the legal systems of the three countries that had occupied Poland as well as their extensive knowledge of the practical application of the procedural rules and principles in other countries. In order to do so they asked themselves fundamental questions that were of a constitutional and procedural nature. Where should the boundaries between what is private and what is public be established? How far could the principles of civil procedure stimulate the development of socio-legal relations? Which of the then legislative trends would prove to be lasting? What did the principle of the judge's control over civil proceedings and his/her discretionary power mean? Should the fast pace of the proceedings be a procedural priority? At the same time, they wanted to fulfil ambitions to propose their own solutions that would be worthy of the Second Polish Republic, the state, which after regaining independence was to create a legal system respecting citizens' rights while ensuring the efficiency and security of modern legal transactions.

The Code of 1930, which entered into force in 1933, achieved their goals to a wide extent. It respected the autonomy of the individual in the sphere of civil law relations with their integral part that was the protection of individual rights before the courts. This was guaranteed by the fundamental principles of the civil process¹⁸⁸: the adversarial

as well as the original solutions, see: Lubiński, *supra* note 12, pp. 347-364; Stawarska-Rippel, *supra* note 4, pp. 23-27, 110-156; Stawarska-Rippel, *supra* note 27, pp. 353-362; Polkowski, *supra* note 12; P. Rylski, K. Weitz, *Wpływ rosyjskiej ustawy postępowania cywilnego z 1864 r. na polskie postępowanie cywilne* [The Influence of the Russian Law on Civil Procedure of 1864 on Polish Civil Proceedings], *Polski Proces Cywilny* [Polish Civil Procedure] 2015, no. 2, p. 164.

¹⁸⁸ In the jurisprudence of the Second Republic of Poland, the issue of the content and rank of the principles of civil process were the subject of disagreements. Two classifications were proposed in this respect: Kruszelnicki, *supra* note 39, p. 470 and E. Waśkowski, *System procesu cywilnego. Wstęp teoretyczny. Zasady racjonalnego ustroju sądów i procesu cywilnego*

principle, the principle of a free exercise by the parties of their rights (dispositive principle), the principle of the equal rights of the parties, the principle of two instances, and the principle of procedural formalism. They were supported by the principle of the judge's control over the proceedings, the principle of immediacy, the principle of oral proceedings, the principle of open proceedings, the principle of the free appraisal of evidence, and the principle of concentration of material submitted in court proceedings¹⁸⁹. The first two of these principles were not unconditional, taking into account the social function of civil procedure, and the adversarial principle was partly connected to the principle obliging a court to search for evidence not presented by the parties (the principle of instructionality). Reciprocal links between these principles, which counterbalanced the activity of the parties and the judge, took into account the perspective of the entire Code. For the purposes of the Polish system of civil procedure the adversarial and dispositive principles were associated with the inquisitorial principle. The judge became responsible for the proper coexistence of these principles and for reliable judicial decisions made within a reasonable time, which also required the organisational efficiency of proceedings. The determination of the substantive truth was supported by the principle of instructionality – the substantive management of the process, as the Code emphasised the judge's duty to determine the facts in a comprehensive manner (Article 234) and to assess the reliability and power of evidences, also on the basis of a comprehensive consideration (Article 257).

Code structures alluded in their form to some procedural solutions of the process implemented in countries like Germany (1877), Austria (1895), and France (1806), as well as Russia (1864)¹⁹⁰. However, the legal

[*The System of Civil Law. Theoretical Introduction. The Principles of the Rational System of Courts and Civil Process*], vol. I, Wilno 1932, p. 104.

¹⁸⁹ The principle of concentration of material submitted in court proceedings is one of the principles of Polish civil procedural law which aims at counteracting the lengthening of proceedings by providing time limits for collecting procedural material such as facts or evidences.

¹⁹⁰ About debates in the Codification Commission on the adversarial model and an investigative element in the civil process, see: A. Stawarska-Rippel, *Kontradiktoryjność i inkwizycyjność w europejskim procesie cywilnym XIX i XX w. [Adversarial and Inquisitorial Principles in the European Civil Process in the Nineteenth and Twentieth Centuries]*, Czasopismo

provisions adopted in 1930 in Poland were not a simple compilation of those structures, but an original procedural assumption. It also took into account the then socio-economic circumstances and the characteristic features of the Polish legal system, as well as a critical analysis of legal regulations in other countries. Such a point of view resulted in the implementation of procedural structures among others which included partial restrictions on the procedural autonomy of the parties. These measures formed part of the requirements of comparative law, then intensively developing in Europe¹⁹¹. They were similar to the Austrian solutions but they maintained the essence of the civil procedural law derived from French legislation. In addition to doctrinal reasons, practical reasons were also decisive, including the fear of protracted proceedings. The original consistency of the Code was partially reduced by the amendments introduced to the Codification Committee's proposal by the representatives of the Ministry of Justice¹⁹². There was still the division of litigious and non-litigious proceedings and although non-litigious proceedings remained outside the Code, its codification was also planned in the course of the following legislative procedure.

The principles of the first Polish Code of Civil Procedure were indeed editorially dispersed, but functionally they remained in a strong relationship. The first part of the Code regulated the presumption of the jurisdiction of the common courts and confirmed the right of every person to judicial protection, including preventive protection. In many provisions, the notion of dispute was emphasised. The Code allowed courts to take evidence *ex officio*, unless the parties refused their consent or it concerned evidence from documents, the testimony of witnesses, and the hearing of the parties (Articles 250, 273, 289, 330). The courts' right was additionally limited by the obligation to indicate the source from which they got to know about the evidence that could be only the statements of the parties or the files of the case. Consequently, this kind of judicial activity did not limit significantly the adversarial principle. The dispositive actions of the parties were not subject to judicial review.

Prawno-Historyczne [Journal of Law and History] 2013, vol. 2, p. 127; Stawarska-Rippel, *supra* note 187, pp. 358-360.

¹⁹¹ See: Lubiński, *supra* note 187, pp. 351-352, 358-359.

¹⁹² See: Stawarska-Rippel, *supra* note 187, pp. 106-107.

The withdrawal of the claim, if it took place after the start of the trial, was subject to the consent of the defendant, unless it was connected with the waiver of the claim (Article 219). The adversarial and dispositive principles were strengthened by the fact that courts were bound by the request presented in the lawsuit – the court did not have the right to adjudicate on issues which were not presented in the request or to decide over the request (Article 349). Also the examination of the case by the court of the second instance was limited to the scope of the appellate complaint (Article 415), which could take into account only the invalidity of the proceedings or the failure to recognise the essence of the issue by the court of the first instance.

Solutions relating to the principle of the concentration of the material submitted in court proceedings limited the capacity of the parties to act to a moderate extent. According to the Code, preparatory documents should be characterised by a concise and substantive content, indicating the relevant evidence or making reference to the allegations and evidence of the opposing party. However, there were no provisions concerning the preclusion of evidence in proceedings before the court of first instance. The parties could present facts and evidences till the end of the hearing (Article 238 § 1). The adverse effects in the form of the reimbursement of expenses (Article 104) or the rejection of evidence were provided for in cases of stalling for time or failing to respect regulations and court decisions. In judicial practice more importance was accorded to the court's right, formulated in a categorical form, to reject evidence also if disputable circumstances had been "sufficiently explained" (Article 238 § 2). The wrong interpretation of this provision sometimes led to situations in which courts refused to take evidence only from one of the parties.

The statement of defence was optional. The obligation of the defendant to submit a reply or the obligation of both parties to exchange other documents with the determination of their date, could only arise on the basis of an order issued by the president of an adjudicating panel in "complicated and accounting" matters (Article 229). The president could also issue other orders of a preparatory nature. These and other measures, taken also at the hearing, aimed to prevent the lengthiness of proceedings and the fragmentation of the substance of the claim. Courts "should strive" for a comprehensive explanation of contentious issues at the hearing, and

“if possible” should close the hearing at the first court session “without adjournment” (Article 234). The practice proved that the solutions provided by the Code which concerned the preparatory stage of the process did not significantly accelerate the proceedings. While referring to this fact, some representatives of legal doctrine signalled the need to introduce a mandatory response to the lawsuit.

In the proceedings before the court of second instance it was possible “if necessary” to present new facts and evidence in the appellate complaint. However, they could be omitted if the court considered that they should have been presented earlier, before the court of first instance, except that if it was possible later or previously it was not necessary. This solution could be also applied to new facts and evidence presented directly at the hearing (Article 411).

A legal remedy that could be lodged with the court of second instance was an appellate complaint that could concern every ruling. The Code did not regulate the basis of the complaint, but only concisely formulated its content. The court of second instance heard the case and substantively repealed, modified, or maintained the decision of the court of first instance. Against judgments ending the proceedings, the parties could lodge a cassation complaint, with the exception of cases with a low value of the subject of dispute and cases concerning the infringement of possession. According to the Code, the cassation complaint could be based on the misinterpretation or misapplication of substantive law or the violation of the essential procedural principles under the condition that it could significantly influence the outcome of the case. The cassation appeal was recognised by the Supreme Court, which was also bound by its scope. The Supreme Court *ex officio* took into account the violation of the relevant procedural principles as well as the public policy criterion (Article 441). Apart from judgements of a cassation nature, the Supreme Court could also issue substantive judgements if it found a violation of substantive law.

Finally, those provisions of the Code which were intended to work out a settlement must be mentioned, including the inducement of the parties to reconciliation (Article 246) and the possibility of reconciliation of the parties before a county court before bringing a court action (Article 399).

The several years of application of the Code of Civil Procedure coincided with the slow pace of recognising some cases, which was not caused by procedural reasons. However, this problem dominated in the discussion on the assessment of principles adopted in 1930. In the course of the discussion there was a collision outlined between the proposed methods aimed at expediting judicial proceedings and the need to establish measures that would guarantee the correct substantive content of the final judicial decisions. The pace of litigation began to be regarded as a synonym of efficiency and an element of the interpretation of discretionary power of the judge. There also appeared the question of whether expediting the procedure or blocking the parties' opportunity to delay the proceedings could become one of the objectives. Above all, the notion of fast litigation became an argument that was socially and politically very popular¹⁹³. Some lawyers claimed that the situation primarily required the correction of principles concerning the appeal proceedings and the collegial way of the recognition of cases in the first instance as well as provisions relating to the principle of concentration¹⁹⁴. The systematic changes were not implemented, but on 21 November 1938 a decree was issued on the streamlining of litigation¹⁹⁵. A year earlier, in the Ministry of Justice a new office was established which was responsible for monitoring the substantive and technical level of judges' work, subject to the limits of their statutory independence¹⁹⁶.

2. THE PRINCIPLES OF CIVIL PROCEEDINGS IN THE YEARS 1944-1964

In the case of Poland, the end of World War II was not only connected with the end of the German occupation, which brought human, economic,

¹⁹³ T. Cyprian, *Sąd apelacyjny jako instancja kasacyjna karna* [The Court of Appeal as a Criminal Cassation Instance], *Gazeta Sądowa* [Judicial Gazette] 1938, no. 4, p. 754.

¹⁹⁴ Critical opinions on the efficiency of the judiciary in the Second Republic were not uniform with respect to methods of improving the situation. Some lawyers urged for the reform of, among others, the instance system and the rule of providing explanatory notes to judgments while others signaled a need for the better application of existing legislation; see: A. Machnikowska, *Zjazdy prawników polskich* [Conferences of Polish Lawyers], *Palestra* [The Bar] 2005, no. 5-6, pp. 172-180.

¹⁹⁵ Dz.U. [Journal of Laws] No. 89, item 609.

¹⁹⁶ The Regulation of the Minister of Justice of 31.07.1937, Official Journal of the Ministry of Justice 1937, No. 8.

and cultural loss incomparable with the situation in any other European country, but also with a fundamental change in the political system. The latter resulted from the extension of the zone influenced by the Soviet Union over the countries of Central and Eastern Europe. Under the banner of people's democracy, these countries gradually began to introduce legal solutions which were typical of a totalitarian state, economically and ideologically subordinated to the interests of the authorities of the Soviet Union. In Poland, this process required significant legislative changes, which were implemented at very different paces and in very different forms, not always adequately to other transformations and official information given to the public.

The above mentioned circumstances also decided on the fate of the Code of Civil Procedure of 1930. Initially, in the years 1944-1948, the Code was stable because of organisational reasons and tactics of the new Polish government. Moreover, the process of the consolidation of substantive and formal civil law was completed and it extended the scope of the Code's application¹⁹⁷. Also the non-litigious proceedings were extended through its codification¹⁹⁸ and the inclusion of the further types of cases. In order to do it, the draft law developed in the Second Republic were used¹⁹⁹. The Code of Civil Procedure underwent at that time only slight amendments that did not concern the procedural principles²⁰⁰. At the same time, however, the new authorities excluded important areas of civil law

¹⁹⁷ Decree of 25.09.1945, Dz.U. [Journal of Laws] No. 48, item 271; decrees of 21.05.1946 and of 8.11.1946, Dz.U. [Journal of Laws] No. 6, item 53; No. 22, item 140; No. 57, item 321; No. 60, item 329; No. 63, item 345 and item 346.

¹⁹⁸ Decree of 18.07.1945 Code of non-litigious procedure, Dz.U. [Journal of Laws] No. 27, item 169; and decree of 8.11.1946 on non-litigious procedure in the field of property law, Dz.U. [Journal of Laws] No. 63, item 345.

¹⁹⁹ See more: S. Grodziski, *Prace nad kodyfikacją i unifikacją polskiego prawa prywatnego (1919-1947)* [The Work on the Codification and Consolidation of Polish Private Law (1919-1947)], *Kwartalnik Prawa Prywatnego* [The Private Law Quarterly] 1992, vol. I, pp. 22-24; A. Lityński, *Spór o postępowanie niesporne (1945-1964)* [The Dispute over Non-Litigious Proceedings (1945-1964)], *Miscellanea Historico-Iuridica* 2003, vol. 1, p. 53.

²⁰⁰ Decree of 22.10.1947 on the amendment of some provisions of the Code of Civil Procedure, Dz.U. [Journal of Laws] No. 65, item 391; decree of 29.09.1948 on the amendment of the implementing provisions of the Code of Civil Procedure, Dz.U. [Journal of Laws] No. 44, item 314; law of 27.04.1949 on the amendment of some provisions of the Code on Civil Procedure, bankruptcy law, and the provisions implementing matrimonial property law, Dz.U. [Journal of Laws] No. 32, item 240.

relations from the jurisdiction of courts and delegated them to the competence of administrative and *quasi-judicial* authorities²⁰¹ applying *ad hoc* procedures not regulated by the Code. It mainly concerned the ownership transformations, which were carried out on a large scale, but also were loosely associated with other civil cases²⁰². Along with the acquisition of the entire political power in the country by the communist regime, the guarantees of the independence of judges and courts were suspended. These decisions were initially presented as improvement actions necessary during the transition period. In fact, they were a part of consistently implemented concept of a fundamental change in the legal system, which included not only the repeal of most of the legal acts adopted in the Second Republic of Poland, including the Code of Civil Procedure²⁰³, but also their replacement by the legislation that in relations between an individual and the state always gave the absolute primacy to the latter.

The upcoming changes were first mentioned in the statements of the representatives of the Ministry of Justice, who were persuading to merge the litigious and non-litigious modes of proceedings in a way which assumed that the principle of non-litigious proceedings would become the essential elements of the whole civil procedure. This was justified by the need to strengthen the rights of the economically weaker parties²⁰⁴. In fact, as was not said then, it was a prelude to the dissemination

²⁰¹ See more: A. Machnikowska, *Wymiar sprawiedliwości w Polsce w latach 1944-1950* [The Judiciary in Poland in the Years 1944-1950], Gdańsk 2008, pp. 371-394, 462-480. See also: A. Mączyński, *Dawne i nowe instytucje polskiego prawa mieszkaniowego* [Old and New Institutions of Polish Housing Law], *Kwartalnik Prawa Prywatnego* [The Private Law Quarterly] 2002, vol. 1, pp. 69-74.

²⁰² See more: A. Machnikowska, *Prawo własności w Polsce w latach 1944-1981. Studium historycznoprawne* [Property Law in Poland in the Years 1944-1981. Historical and Legal Study], Gdańsk 2010, pp. 163-284.

²⁰³ Ministerstwo Sprawiedliwości, *Prezentacja Kodeksu postępowania nieprocesowego jako kierunku zasadniczych zmian w całym systemie prawa procesowego*. Warszawa 16-17.11.1946 [The presentation of the Code of the non-litigious proceedings as the direction of changes in the entire system of procedural law. Warsaw 16-17.11.1946], *Demokratyczny Przegląd Prawniczy* [Democratic Legal Review] 1947, no. 4.

²⁰⁴ The criticism of dispositive principle, which was described as the excessive freedom of parties in civil law relations that deformed the judiciary – see: W. Siedlecki, *Istota procesu cywilnego z punktu widzenia interesów Państwa i jednostki* [The Essence of the Civil Process From the Point of View of the State and an Individual], *Państwo i Prawo* [State and Law] 1947, no. 7-8.

of principles promoted in the Soviet doctrine of procedural civil law: the inquiry principle, *ex officio* principle and the principles of objective truth as interpreted by Marxist ideology. The officials also pushed for the introduction of a new model of instance and non-instance control involving a revision and an extraordinary revision, while reducing the organisation of common courts based on instances. An argument presented in this matter was to accelerate the course of proceedings. In reality, this solution was supposed to guarantee a permanent political control over case-law. A vast majority of the representatives of jurisprudence and judicature did not support these proposals, pointing out that they would not facilitate the proceedings, which required other reforms²⁰⁵, but they would reduce the level of judicial protection of individual rights.

However, the changes were inevitable due to the geopolitical situation of Poland. Economic transformations that aimed to complete the elimination of private property, which was the negation of the classical principles of civil law, were accelerated. In 1949 a state commercial arbitration²⁰⁶ began to work, which was dominated by principles based on the Soviet model: the principle of inquiry, the principle of taking actions *ex officio* and the principle of written proceedings. The authorities widely began to refer to new ideological concepts. This resulted in the relativisation of the autonomy of civil law entities, the redefinition of the principle of the formal equality of the parties in the court proceedings and the justification of the extension of the procedural rights of judges and prosecutors, including the right to the teleological interpretation of legal provisions and also those coming from the people's legislator²⁰⁷. At that point, the source

²⁰⁵ See: W. Miszewski, *Dru ga instancja merytoryczna w procesie cywilnym* [The Second Substantive Instance in the Civil Process], *Demokratyczny Przegląd Prawniczy* [Democratic Legal Review] 1947, no. 4; S. Garlicki, *Dwuinstancyjność w procesie cywilnym* [Two Instances in the Civil Process], *Demokratyczny Przegląd Prawniczy* [Democratic Legal Review] 1947, no. 6.

²⁰⁶ Decree of 5.08.1949, Dz.U. [Journal of Laws] No. 46, item 340. See more: T. Mróz, *O państwowym arbitrażu gospodarczym i jego funkcjach w PRL* [On the State Economic Arbitration and its Functions in the Polish People's Republic], *Miscellanea Historico-Iuridica* 2005, vol. 5.

²⁰⁷ The objection against taking over the duties assigned to legislative power by judges were expressed by, among others: K. Grzybowski, *Ustrój Polski współczesnej 1944-1948* [The Constitutional System of the Contemporary Poland], Kraków 1948, vol. I, p. 121 and J.J. Litauer, *O metodzie wypełniania luk w ustawodawstwie* [On the Method of Filling Gaps in Legislation], *Państwo i Prawo* [State and Law] 1947, no. 7-8.

of the latter postulate is worth mentioning. It was connected not only with instrumentation and legal nihilism. At that time in the Soviet Union, the Code of Civil Procedure of 1923 was in force which did not contain as many elements of the socialist legal doctrine as it was claimed by the propaganda²⁰⁸. Soviet legal concepts were then created by giving new meanings to traditional legal concepts. For example, the adversarial principle began to be defined as the increased activity of the judge acting in the consolidated proceedings which did not much differ from the criminal proceedings²⁰⁹. These structures, however, still did not fully meet the criteria for a new standard of proceedings. It appeared much easier to use current political methods to interpret old and new legal provisions.

It was not an obstacle to the re-evaluation of legal principles in the countries of Central and Eastern Europe, in which full economic subordination to the USSR and the mono-party system were introduced. One of the consequences was the entry into force of a new codification of civil proceedings in Bulgaria (1952), Czechoslovakia (1950), and Hungary (1952) or, as in case of Romania and East Germany, the introduction of far-reaching modifications of the existing legislation²¹⁰. In Poland, however, the change was made on a piecemeal basis. While planning a new codification, the authorities carried out a partial decodification by amending the existing regulations in the years 1950-1954²¹¹. It covered the extension of some solutions of non-litigious proceedings to litigation and the granting

²⁰⁸ For more about the roots of the Soviet concept of civil law see: A. Bosiacki, *Utopia. Władza. Prawo. Doktryny i koncepcje prawne bolszewickiej Rosji 1917-1921* [*Utopia. Power. Law. Doctrines and Legal Concepts of Bolshevik Russia 1917-1921*], Warszawa 2012, pp. 289-330. About the Soviet civil procedure see: A. Lityński, *Prawo Rosji i ZSRR 1917-1991 czyli historia wszechzwiązkowego komunistycznego prawa (bolszewików). Krótki kurs* [*The Law of Russia and USSR 1917-1991, so on the History of All-Union Communist (Bolshevik) Law. A Short Course*], Warszawa 2012, pp. 276-289.

²⁰⁹ One of the examples is: A.J. Wyszynski, *Teoria dowodów sądowych w prawie radzieckim* [*The Theory of Court Evidences in Soviet Law*], Warszawa 1949, p. 290.

²¹⁰ See: Stawarska-Rippel, *supra* note 189, p. 140.

²¹¹ Law of 20.07.1950 on the amendment of some provisions of the proceedings in civil law cases, Dz.U. [Journal of Laws] No. 38, item 349; consolidated text: Dz.U. [Journal of Laws] No. 43, item 394; decree of 23.04.1953 on the amendment of some provisions on the proceeding in civil law cases, Dz.U. [Journal of Laws] No. 23, item 90; decree of 2.06.1954 on the legal representation of authorities, offices, institutions and state enterprises before courts, Dz.U. [Journal of Laws] No. 25, item 93.

of new powers to the adjudicating panel, such as the right to increase the range of evidence that can be taken *ex officio* and to introduce the possibility of adjudication over the request in some cases. A particular commitment of the judge was required in cases involving the State Treasury, the organisational units of which were deprived of the previous legal representation of the General Prosecutor's Office. A prosecutor obtained the right to freely accede to the case or to bring an action in any case. In this respect, reference was made to a new institution of the "prosecutor's general supervision"²¹² which legitimised prosecutors to co-organise the civil proceedings together with the judge when the public interest so required²¹³.

The appeal procedure was fundamentally transformed as it obtained the features of the revision and was adapted to the new system of common courts, which were deprived of the attribute of independence²¹⁴. Wider opportunities to appeal were granted to the authorities of prosecution and the Minister of Justice. The appeal was replaced by the revision and the cassation appeal by an extraordinary revision. However, these process instruments were not similar to those that existed in the countries of Western Europe, where, among others, the term of revision was also used. The Supreme Court also received the competence to issue the guidelines of justice and judicial practice that were binding for all judges²¹⁵. Changes included also judicial enforcement proceedings, from which some cases were excluded and subjected to administrative enforcement. The new regulations underwent broad interpretation referring to the political

²¹² On the inconsistencies of the prosecutor's general supervision and its consequences see: M. Łysko, *Prokuratorski nadzór ogólny w Polsce w latach 1950-1967. Studium historycznoprawne* [The Prosecutor General Supervision in Poland 1950-1967. Historical and Legal Study], Białystok 2006, pp. 45-49, 91-94.

²¹³ See: K. Stefko, *Udział prokuratora w postępowaniu cywilnym* [Prosecutor's Participation in the Civil Proceedings], Warszawa 1956, p. 54; Z. Włodyka, *Powództwo prokuratora w polskim procesie cywilnym* [Prosecutor's Claim in the Polish Civil Process], Warszawa 1957.

²¹⁴ Law of 20.07.1950 on the amendment of the Law on common courts, Dz.U. [Journal of Laws] No. 38, item 347; law of 29.12.1951 on the amendment of the Law on common courts and the Code of Civil Procedure, Dz.U. [Journal of Laws] 1952, No. 1, item 5.

²¹⁵ See more: A. Bereza, *Sąd Najwyższy w latach 1945-1962. Organizacja i działalność* [The Supreme Court in the Years 1945-1962. Organisation and Activities], Warszawa 2012, pp. 182-190.

and economic situation, and above all, the will of the people implementing the principle of popular sovereignty.

The decodification of 1950 was presented as a solution modernising and democratising Polish civil proceedings²¹⁶. However, the vast majority of Polish lawyers were very critical about it, especially with regard to the principles of the appeal proceedings²¹⁷. In fact, the introduced solutions increased state involvement in the resolution of civil cases, both by limiting the rights of the parties in the process and by providing the possibility of correcting judicial decisions by surveillance measures bypassing instances. In fact, the organs of executive power became the biggest beneficiary of the changes. In addition to legislative actions the pressure on judges was increased by proclaiming, like some lawyers, that the civil proceedings were one of the institutions of the forced implementation of economic development²¹⁸. They also reminded people that courts had not been a separate power since the principle of division of powers had been abandoned.

Despite the announcement that the amendments of law would have a broader scope²¹⁹ and the settlement of disputes would entirely lose its former character²²⁰, just as in the Soviet and Czechoslovak legislation,

²¹⁶ J. Jodłowski, *Sprawozdanie stenograficzne z LXXXIV posiedzenia Sejmu Ustawodawczego w dnia 20-21.07.1950 r.* [Scenographic Record of LXXXIV Meeting of the Legislative Sejm on 20-21.07.1950], Warszawa 1951, para. 44.

²¹⁷ See: Stawarska-Rippel, *supra* note 187, pp. 180-181, 333-337.

²¹⁸ "Law cannot tolerate the alleged conflict of interests between an individual and society, because there is only one kind of contradiction – class"; S. Szer, *Kilka uwag na temat pojęcia interesu społecznego w prawie cywilnym* [Some Remarks on the Concept of Public Interest in Civil Law], *Demokratyczny Przegląd Prawniczy* [Democratic Legal Review] 1950, no. 1, p. 38.

²¹⁹ See: Z. Kliszko, *W pięciolecie wymiaru sprawiedliwości* [On the Fifth Anniversary of Justice], *Demokratyczny Przegląd Prawniczy* [Democratic Legal Review] 1950, no. 6-7; Protocol no. 34 from the meeting of the Political Office of KC PZPR of 19.04.1950, quoted after Z.A. Ziemia, *Prawo przeciwko społeczeństwu. Polskie prawo karne (1944-1956)* [Law Against Society. Polish Criminal Law (1944-1956)], Warszawa 1997, p. 55. See more: A. Lityński, *O kodyfikacji procedury cywilnej w Polsce Ludowej* [On the Codification of Civil Procedure in the Polish People's Republic], [in:] J. Malec, W. Uruszczak (eds), *Ustrój i prawo w przeszłości dalszej i bliższej. Studia historyczne o prawie dedykowane prof. Stanisławowi Grodzkiemu w pięćdziesiątą rocznicę pracy naukowej* [The Organisational Structure and Law in the More Distant and More Recent Past. Historical Studies on Law Dedicated to Prof. Stanisław Grodzki in the Fiftieth Anniversary of His Scientific Work], Kraków 2001, pp. 541-543; Grzybowski, *supra* note 21, p. 96 et seq.

²²⁰ See: J. Jodłowski, *Nowy etap przebudowy polskiego procesu cywilnego* [The New Phase of the Reconstruction of Polish Civil Process], *Państwo i Prawo* [State and Law] 1953, no. 5.

the new Code was not adopted. The legislative works were prolonged when, owing to the inconsistency of the political and economic system in Poland, difficulties appeared which concerned the development of legal structures that would effectively regulate the legal relations included in the Code and at the same time would satisfy the assumptions of Marxist ideology in its Soviet interpretation. Contrary to the distributed information, the legal doctrine practiced in the Soviet Union was not helpful in this regard²²¹. The new draft focused on the elimination of the litigious nature of the civil proceedings, which meant that apart from controversial solutions there were also a number of significant legal defects.

The above recodification plans become outdated in 1956. In Poland, social protests and personnel changes in the circles of authorities took place at that time. They contributed to the controlled adjustment of economic policy, which required the withdrawal of certain restrictive legal practices and the preparation of new concepts concerning the regulation of some parts of economic relations. This created a chance for the evolutionary nature of the following changes and for the maintenance or restoration of some procedural guarantees of citizens' rights. Polish civil procedure, following "its own, Polish road to socialism"²²², was to take advantage of the achievements of the Polish legal doctrine, including those from the interwar period²²³, and to have a positive impact on those elements of the legal system which had already been substantially changed under the slogan of socialist progress²²⁴. The new Codification Commission²²⁵ was

The litigious proceedings "in fact were supposed to disappear in favour of non-litigious proceedings", Lityński, *supra* note 198, p. 59.

²²¹ Already at the beginning of the initial phase of codification procedure the Soviet solutions were presented, see: J. Winiarz, *Z zagadnień kodyfikacji postępowania cywilnego. Postulaty de lege ferenda* [On the issues of the codification of civil proceedings], *Nowe Prawo* [New Law] 1952, p. 15.

²²² *Sprawozdanie z prac Komisji Kodyfikacyjnej* [The Report From the Work of the Codification Commission], *Państwo i Prawo* [State and Law] 1957, no. 3, p. 621.

²²³ The autonomous nature of the Commission was emphasised by, *inter alia*, the Rules of the Codification Commission, see more: P. Fiedorczyk, *Unifikacja i kodyfikacja prawa prawa rodzinnego w Polsce (1945-1964)* [The Unification and Codification of Family Law in Poland (1945-1964)], Białystok 2014, pp. 297-300.

²²⁴ See: Z. Izdebski, *Rewizja pojęcia praworządności ludowej* [The Revision of the Concept of the People's Rule of Law], *Państwo i Prawo* [State and Law] 1957, no. 3, pp. 443-454. About the role of a judge in the interpretation of the norms of the people's law which underwent

aware that the principles of Polish civil proceedings had again become an open issue²²⁶.

The draft of the new Code was presented in 1960²²⁷. The main difference between this document and the previous draft was the maintenance of two types of proceedings: litigious and non-litigious²²⁸ and the moderate limitation of the adversarial and dispositive principles in favour of the powers of courts and prosecutors. In comparison to the principles that had been in force since 1950, those changes were not so significant and they still maintained the controversial solutions²²⁹. However, the government, monitoring the work of the Commission, found that the draft too little implemented political directives, and therefore it introduced some significant adjustments, sometimes outside the official mode of legislative proceedings²³⁰. The new draft increased the powers of judges and prosecutors, privileged the units of the socialised economy²³¹, and again limited the distinctions between litigious and non-litigious proceedings. Only then could permission to adopt the new law be granted.

“oscillation interpretation” because of their semantic indeterminacy or “adaptation to the needs of life” see more: J. Wróblewski, *Zagadnienia teorii wykładni prawa ludowego* [*The Issues of the Theory of Interpretation of People's Law*], Warszawa 1959, pp. 203-206.

²²⁵ The Codification Commission was established by the Regulation of the President of the Council of Ministers of 23.08.1956, and its inaugural meeting took place on 17.12.1956; see *Sprawozdanie z prac Komisji Kodyfikacyjnej* [*The Report From the Work of the Codification Commission*], *Państwo i Prawo* [State and Law] 1957, no. 3, pp. 620-621.

²²⁶ Lisiewski, *supra* note 141, p. 17.

²²⁷ Z. Resich, *Projekt kodeksu postępowania cywilnego po pierwszym czytaniu* [*The Draft of the Code of Civil Procedure After the First Reading*], *Nowe Prawo* [New Law] 1960, no. 1, p. 3 et seq.; W. Siedlecki, *Z prac Komisji Kodyfikacyjnej nad nowym kodeksem postępowania cywilnego PRL* [*On the Work of the Codification Commission on the New Code of Civil Procedure*], *Studia Cywilistyczne* [Civilistic Studies] 1961, vol. I, p. 301 et seq.

²²⁸ See: M. Lisiewski, *Scalenie postępowania spornego i niespornego* [*The Consolidation of Litigious and Non-Litigious Proceedings*], *Zeszyty Naukowe Uniwersytetu Łódzkiego* [Acta Universitatis Lodziensis] 1959, no. 14, p. 83.

²²⁹ See: Siedlecki, *supra* note 226, p. 302.

²³⁰ *Inter alia*: Article 539 § 1 and Article 831 § 1 of the Code of Civil Procedure, see: W. Siedlecki, *Kilka uwag na temat wykładni i stosowania przepisów nowego Kodeksu postępowania cywilnego* [*Some Remarks on the Interpretation and Application of the Provisions of the New Code of Civil Procedure*], *Studia Cywilistyczne* [Civilistic Studies] 1969, vol. XII-XIV, p. 291. More about the methods and content of the amendments introduced to the draft see: Stawarska-Rippel, *supra* note 187, pp. 357-360.

²³¹ See: J. Krajewski, *Gwarancje ochrony własności społecznej w postępowaniu cywilnym (rozpoznawczym)* [*The Guarantees of the Protection of Social Property in the Civil Proceedings (examination proceedings)*], *Państwo i Prawo* [State and Law] 1965, no. 7.

3. THE CODE OF CIVIL PROCEDURE OF 1964

The Code of Civil Procedure, adopted on 17 November 1964²³², according to the declarations of the authorities, was supposed to be a legal act responding to the needs of the advanced socio-economic development of the Polish People's Republic and a proof of the achievements of the socialist doctrine of civil procedure. This ambitious goal was presented as the justification for a long period of waiting for the completion of these actions. It was emphasised that it would solve the constant problem of the low efficiency of courts of general jurisdiction.

The facts concerning recodification were not so clear. Firstly, the new legal provisions came from different legal traditions and the motivation for maintaining or introducing them was not uniform. Secondly, many civil law relations were not subject to the provisions of the Code and at the same time a lot of restrictions of legal proceedings were maintained, including Article 2 of the Code, which sanctioned extrajudicial recognition of lawsuits between the entities of the socialised economy and entitled the government to issue special legal provisions which regulated the settling of other civil cases in the procedure going beyond the jurisdiction of courts. In the conditions of a nationalised economy it lowered the impact of the new law. Thirdly, the authorities still intended to apply the teleological interpretation of law, which created the possibility, in the case of dispositional judges, of the implementation of current political interests regardless of the wording of certain provisions.

The content of the Code of 1964 was influenced by several circumstances, such as: the political situation, the attitude of the representatives of Polish legal doctrine, and the condition of Soviet jurisprudence. At the time when the Codification Commission started to work in 1956, the authorities decided to introduce some slight liberalisation in order to calm down the social mood and improve the economy. For this reason, in the course of discussions on the reform of the legal system, including civil proceedings, there were signs that primarily the achievements of the Polish legal doctrine should

²³² Law of 17.11.1964, Dz.U. [Journal of Laws] No. 43, item 296. The mistakes in the text were corrected by the announcement of the President of the Council of Ministers of 23.04.1965, Dz.U. [Journal of Laws] No. 15, item 113.

be taken into account. When the Codification Commission finished its activity, the government again returned to the rhetoric of socialist ideology²³³. As a result, the Commission's proposal was subjected to a second editorial review and then modified. Some additional elements, similar to the principles of the civil proceedings applied in other socialist countries including the text of the new Soviet legislation (1961 – The principles of the civil procedure of the USSR and the union republics), were introduced.

Referring to the then Polish doctrine of the civil procedural law, not only diverse views, but also the attitude of members of the Codification Committee and jurists, whose concepts were used, proved to be equally important for the content of the Code principles²³⁴. Among them there were people with professional experience from the period of the Second Republic, who possessed a great understanding of the civil procedures and their legal and cultural consequences in other countries. They were making efforts to maintain the essence of adversarial and dispositive principles despite the numerous limitations²³⁵. Other members of the Commission were in favour of far-reaching changes²³⁶, strongly arguing the original provisions of the Code of 1930. As an alternative, they proposed concepts of the socialist legal doctrine. Meanwhile, the Soviet system of civil procedural law was undergoing reconstruction. Its consolidation started in 1957²³⁷, and the new code, which implemented ideological assumptions that had been announced long time before²³⁸, was adopted in 1964. However, some parts of its provisions were very vague, inversely proportional to the legal definitions of an increasing number of functions assigned to the civil proceedings. At the same time, some solutions

²³³ See more: J. Skąpski, *Kodeks cywilny z 1964 r. Blaski i cienie kodyfikacji i jej perspektywy* [*The Civil Code of 1964. Pros and Cons of the Codification and Its Prospects*], *Kwartalnik Prawa Prywatnego* [The Private Law Quarterly] 1992, vol. 1, p. 75.

²³⁴ See more: Czachórski, *supra* note 21, pp. 14-15; Grzybowski, *supra* note 21; Lityński, *supra* note 21, pp. 151-153; Stawarska-Rippel, *supra* note 187, pp. 221-234.

²³⁵ Lisiewski, *supra* note 141, p. 12; Resich, *supra* note 143, pp. 56-69.

²³⁶ An example is the opinion of J. Jodłowski, who proposed the amendment of the Code using the same arguments as in the first half of 50s and at the beginning of the 60s, see: J. Jodłowski, *Z zagadnień polskiego procesu cywilnego* [*On the Issues of the Polish Civil Process*], Warszawa 1961, pp. 25, 26.

²³⁷ See: Lubiński, *supra* note 17, p. 230.

²³⁸ See: Stawarska-Rippel, *supra* note 189, pp. 141-142.

of the USSR legislation, including the limitation of the adversarial principle, were only a creative adaptation of the principles derived from other jurisdictions²³⁹. These circumstances meant that Soviet jurisprudence was not able to offer too many really new procedural solutions so instead it was limited to modifications and presenting several variants of already existing elements.

The attitude of some Polish lawyers involved on the side of the classical principles of law and the problems faced by “socialist jurisprudence” decided that in its normative layer the Code of Civil Procedure of 1964 was not as avant-garde as had been announced by the authorities. It confirmed the shift of boundaries between the rights of the parties and the competences of courts and prosecutors, as well as the modification the scope of conduct of the litigious and non-litigious proceedings. The procedure was dominated by the principle of inquiry, but, it maintained some degree of procedural autonomy of the parties. Thus, the Polish legal system retained some provisions of the civil procedure which corresponded to the classical principles²⁴⁰. The presence of some of these principles resulted from their universal functionality. The principles of the Code of Civil Procedure of 1964, and above all their specification in special provisions were shaped by the compilation of: some standards of the Polish civil procedure applied in 1930, the principles and institutions implemented to the system after 1944 in order to make the forced transformation of the political system, and the independent achievements of post-war Polish legal doctrine. The editorial aspect of the Code should also be mentioned as it was as precise as possible in order to prevent its instrumental use. The official presentation of the Code and the structure of its first part were supposed to indicate the differences and progress between the law of 1930 and the law of 1964. For this reason, the new guiding principles of the process were pointed out in the first place, starting from the principle of objective

²³⁹ Attention to this fact was drawn by Stawarska -Rippel, *supra* note 187, p. 364.

²⁴⁰ See: Siedlecki, *supra* note 229, pp. 291-292; E. Wengerek, *Demokratyzacja procesu cywilnego w Polsce Ludowej* [The democratisation of civil process in the Polish People's Republic], *Ruch Prawniczy, Ekonomiczny i Socjologiczny* [Journal of Law, Economics and Sociology] 1975, no. 1, p. 39; Lityński, *supra* note 218, p. 64.

truth that was treated as “the principle of principles”²⁴¹ and the principle of the protection of social property, through the principle of “real” equality of the parties, and the principle of controlled ability to exercise rights concerning the subject of the process, to the principle of moderate formalism²⁴². All these principles together legitimised the rights and duties of judges and public prosecutors in a wider way than had been previously. They were implemented through the limitation of the principle that courts should be bound by the request presented in the lawsuit²⁴³ and the content of the bases of appeal²⁴⁴, the possibility of taking evidence *ex officio* without any limitation, the additional procedural duties in cases involving the entities representing social property, as well as the unlimited competence of prosecutors to initiate and join the civil process. The Code also took into account the classical principles of conduct: the principle of open proceedings, the principle of oral proceedings, the principle of immediacy, the principle of the free appraisal of evidence, and the principle of the judge’s control over the proceedings.

The first of the guiding principles – objective (material) truth was established on two levels. The first meant the obligation of the parties and participants in the proceedings to speak the truth. Its breach did not cause any sanctions, but it was justified by loyalty to the process and the prohibition of the abuse of rights in the process²⁴⁵. The second level, which was addressed to courts, established a duty to investigate and clarify the actual content of the factual and legal relations in cases which enabled courts to take *ex officio* actions that were considered necessary in order to supplement the materials and evidence submitted by the parties.

²⁴¹ See: J. Jodłowski, *Zasady naczelnie socjalistycznego postępowania cywilnego* [The Fundamental Principles of the Socialist Civil Proceedings], [in:] J. Jodłowski (ed.), *Wstęp do systemu prawa procesowego cywilnego* [Introduction to the System of Civil Procedural Law], Warszawa 1974, p. 75.

²⁴² See more: W. Siedlecki, *Zasady naczelnie postępowania cywilnego w świetle przepisów nowego kodeksu postępowania cywilnego* [The Fundamental Principles of the Civil Proceedings in the Light of the Provisions of the New Code of Civil Procedure], *Studia Cywilistyczne* [Civilistic Studies] 1966, vol. VII, p. 3 et seq.

²⁴³ See more: Piasecki, *supra* note 114.

²⁴⁴ See more: S. Hanausek, *System zaskarżania orzeczeń sądowych w nowym polskim postępowaniu cywilnym* [The System of Appeal Against Judgements in the New Polish Civil Proceedings], *Studia Cywilistyczne* [Civilistic Studies] 1967, vol. IX, p. 155.

²⁴⁵ See: K. Piasecki, *Nadużycie praw procesowych przez strony* [The Abuse of Procedural Rights by the Parties], *Palestra* [The Bar] 1960, no. 11, p. 20.

In relation to this competence of the court, the legislator used the terms “should” and “may” (Article 3 of the Code), however, the interpretation of this provision relied on the theory of “the ability that in a particular case can turn into a duty”²⁴⁶. Against this background, there appeared views on the principle of the cooperation between participants of the civil process, which even more relativised the adversarial principle²⁴⁷. Most of the representatives of Polish jurisprudence opted for the interpretation maintaining the adversarial principle, which was to coexist with new principles, including the principle of objective truth. In their opinion, it was primarily justified by the use of the previously known less interventionist institution of admonishment (Article 5 of the Code), while maintaining restraint in the use of more powerful measures by the court.

The court’s right to take evidence *ex officio* and to take account of facts not covered by the claims of the parties, resulting from the provisions of the Code (“the court may” – Article 3 § 2; Article 232), remained in a direct relation to the principle of objective truth. These rights were not limited by any requirements and the court had also the right to order an investigation in order to determine the evidence necessary for issuing the decision. The judiciary emphasised the desirability of using this solution especially in cases involving the protection of the social interest, identified with state entities or social and family relations²⁴⁸. However, in cases related to “the rights of status”, concerning the civil situation of a person, it was claimed that the principle of objective truth “did not

²⁴⁶ The resolution of the Supreme Court of 27.06.1953, CIC/C Prez 195/52, *Orzecznictwo Sądu Najwyższego* [Decisions of the Supreme Court] 1953, no. 4, item 95; see: J. Jodłowski, K. Piasecki (eds), *Kodeks postępowania cywilnego z komentarzem* [The Code of Civil Procedure With a Commentary], Warszawa 1989, p. 39.

²⁴⁷ See: W. Siedlecki, *Zasada kontradyktoryjności (sporności) czy zasada współdziałania podmiotów postępowania cywilnego* [The Adversarial Principle or the Principle of Cooperation Between the Participants in Civil Proceedings], *Państwo i Prawo* [State and Law] 1975, no. 6, p. 63.

²⁴⁸ The resolution of the Supreme Court of 15.07.1974, C/ZO/Kw Pr 2/74, *Orzecznictwo Sądu Najwyższego – Izba Cywilna/Pracy* [Decisions of the Supreme Court – Civil/Labor Law Chamber] 1974, no. 12, item 203; the resolution of the Supreme Court of 9.06.1976, III CZP 46/75, *Orzecznictwo Sądu Najwyższego – Izba Cywilna/Pracy* [Decisions of the Supreme Court – Civil/Labor Law Chamber] 1976, no. 9, item 184.

reign supreme”²⁴⁹. Jurists supporting the maintaining of the adversarial principle and its process traditions, even together with evidence taken *ex officio*, emphasised that the powers of the judge did not remove the burden of proof that primarily rested with the parties of the process²⁵⁰.

On the other hand, the court’s right to adjudicate on subject matter not covered by the request or to adjudge over the request, which were sanctioned by the Code, derived from another legal culture. The court was not bound by the scope of maintenance claims, claims for damages in tort actions, as well as all cases with the participation, as a plaintiff, of the units of the socialised economy (Article 321). A similar solution was applied in cases in which courts were bound by the scope of the revision. The previously known exceptions, concerning taking into account *ex officio* the conditions of the annulment of the proceedings, such as the infringement of substantive law or not explaining the relevant facts, were supplemented by the conditions specified in Article 321, to which cases concerning non-property rights were added (Article 381). The possibility of adjudging more than requested also concerned cases relating to labour law, in which an employee was a plaintiff (Article 475 § 2, then Article 477¹). In these cases, courts were also not bound by the scope and content of the revision (Article 475 § 3, then Article 477³). The interpretation of this provision was far-reaching, proving that courts were obliged to determine whether there were the conditions to adjudge more than requested, and, if so, to issue a decision granting broader process protection to the plaintiff²⁵¹.

The limitation of the dispositive principle²⁵² referred also to judicial control of such actions as: withdrawal of a lawsuit, limitation or waiver

²⁴⁹ The resolution of the Supreme Court of 7.04.1971, III CZP 87/70, Orzecznictwo Sądu Najwyższego – Izba Cywilna/Pracy [Decisions of the Supreme Court – Civil/Labor Law Chamber] 1972, no. 3, item 42.

²⁵⁰ See: W. Broniewicz, *Zasad kontradiktoryjności procesu cywilnego w poglądach nauki polskiej (1880-1980)* [The Principle of Adversarial Civil Proceedings in the Views of Polish Legal Doctrine (1880-1980)], [in:] M. Jędrzejewska, T. Ereciński (eds), *Studia z prawa postępowania cywilnego. Księga pamiątkowa ku czci Zbigniewa Resicha* [Studies on Civil Procedural Law. Commemorative Book in Honour of Zbigniew Resich], Warszawa 1985, p. 39.

²⁵¹ See: Piasecki, *supra* note 242, p. 38.

²⁵² See more: J. Lapiere, *Kontrola sądowa czynności dyspozycyjnych stron i uczestników w postępowaniu cywilnym* [The Judicial Control of Dispositive Actions of the Parties and the Participants in Civil Proceedings], [in:] *Księga pamiątkowa ku czci Kamila Stefki* [Commemorative Book in Honour of Kamil Stefka], Wrocław-Warszawa 1967, p. 183.

of a claim, as well as a consent judgement, withdrawal of a revision, objection to a default judgment, or allegations to the writ. It was linked with the reasons of non-compliance of these actions with law, the principles of social coexistence, or a condition of flagrant violation of the interests of entitled persons (e.g. in Article 203 § 4, Article 184, Article 393 § 2, Article 497 § 1). In the doctrine of Polish procedural law the social significance of these provisions was appreciated, however, it was emphasised that there was a need for their strict interpretation as an exception to the dispositive principle. The provision was formulated in a way which indirectly created a duty to examine these circumstances each time and then the lack of consent to withdraw a lawsuit or to resign or to limit the claim. The court was not bound by a recognition of the claim, maintaining full freedom in this regard (Article 213 § 2).

The principle of the equal rights of the parties functioned to a limited extent. That was because of the provisions providing courts and prosecutors with the right to take active actions in favour of the principle of objective truth, as well as the provisions which privileged entities representing the interests of the state. Their source was another guiding principle of the socialist civil process – the protection of social ownership (Article 4) and state institutions which did not conduct business activities (Article 14). In connection with the actual ownership structure in Poland, this principle was mainly related to the state ownership (other types of ownership occurred in a very small proportion). The courts' duties in the process in this regard were scattered, ranging from the preventive signalisation, the notification of the prosecutor and the stronger courts' control of dispositive actions, as well as the ability to summon to participate in a process as a defendant or to sue additional defendants *ex officio*, up to the possibility of adjudicating on the subject matter not covered by the request and to adjudge more than requested.

The principle of prosecutor participation in civil proceedings (Article 7) was worded very broadly. He could both bring an action and join each case, provided that in family law non-material cases the action could be brought only in cases provided by a statute which in practice excluded such activity only in cases of divorce. The conditions of prosecutor participation in the case, which limited the dispositive principle, were so conceptually capacious that they gave him full freedom of action

invoking the protection of: the rule of law, the rights of citizens, social interest and social ownership.

Attention should be also drawn to the method of legal regulation of the principle of concentration of the material submitted in court proceedings (Article 6), supporting the desired pace of the proceedings, which was associated with the preparatory activities of the court before the hearing (Article 208). It was partially supported by the provision determining the dates for presenting factual circumstances and evidence by the party. Before the court of first instance it was possible up to the end of the hearing, subject to the negative, but not nullifying, effects of playing for time or acting inconsistently with the relevant decrees and courts' decisions (Article 217 § 1)²⁵³. This approach was justified by the primacy of the principle of objective truth. The evidence preclusion was provided in the proceedings before the court of second instance – entitling the parties to present in the basis of the revision or later, at the hearing before the court of second instance, only facts and evidence which could not be presented, respectively, before the court of first instance or in the revision (Article 371).

The system of appeals in the Code of 1964 was formed in accordance with arrangements introduced into the Polish system together with the decodification of 1950 with only slight modifications. The main means of instance appeal was the revision, the basics of which were widely regulated retaining their legal nature. The principle that courts were bound by the scope of the revision was subject to numerous exceptions, both connected with the type of legal shortcomings found by the court of appeal and the category of recognised cases (claims for intangible rights, alimony, compensation for the damage caused by a tort), as well as the entity bringing a revision (a unit of the socialised economy, an employee). The decision of the court of second instance on the merits was stipulated for breaches of substantive law, and in other cases only if the court had sufficient grounds for such settlement. The appeal against a final judgment was possible in the form of an extraordinary appeal. This institution was distinguished by: a narrow group of entities authorized to lodge

²⁵³ See: E. Wengerek, *Koncentracja materiału procesowego w postępowaniu cywilnym* [*The Concentration of the Material Submitted in Civil Proceedings*], Warszawa 1958.

an extraordinary appeal, which excluded the direct actions of the parties, the legal and political bases of the extraordinary appeal – a flagrant violation of law or the interests of Polish People's Republic (Article 417), and the possibility of appealing in this mode against any final decision concluding the proceedings.

Compared with the general procedural principles prominently placed in the codes of other socialist countries, the Polish solutions in some cases were more sustainable – the principle of objective truth, in other cases they were regulated similarly widely – the principle of prosecutor participation in civil proceedings, the principle of taking evidence *ex officio*, whereas the Code regulation of the limited binding of courts by requests presented in a lawsuit or an appeal, provided courts with more freedom than procedures in other socialist countries did, except for the Soviet Code of civil procedure of 1964.

The further existence of the Code of 1964 for twenty-five years was very stable, like the state system, in which it functioned. The Code was amended several times, however, these amendments were caused by changes of substantive law, as it was in the cases of family law²⁵⁴, labour law, and social security²⁵⁵, as well as cooperative law and the law on personal and asset insurance. A chance to correct the provisions of civil law, including procedural law, appeared in Poland at the end of 1980, when the most massive public protests that took place in socialist countries resulted in the beginning of the development of the reform programme, mainly at the initiative of citizens. However, the reforms were blocked a year later, when the authorities decided to introduce martial law, during which and in subsequent years, they focused on maintaining the *status quo*. The Ministry of Justice was indeed active – eight amendments to the Code in 1982-1988 – but the critical issues and principles were carefully bypassed.

The lack of significant amendments to the Code, as well as the policy of the instrumental treatment of binding procedural law through

²⁵⁴ Law of 18.07.1974 on the alimony fund, Dz.U. [Journal of Laws] No. 27, item 157; law of 19.12.1975 on the amendment of the Family and Guardianship Code, Dz.U. [Polish Journal of Laws] No. 45, item 234.

²⁵⁵ Law of 24.10.1974, Dz.U. [Journal of Laws] No. 39, item 231; law of 18.04.1985 on the amendment of the Code of Civil Procedure, Dz.U. [Journal of Laws] No. 20, item 86.

the teleological interpretation of selected provisions, which was previously implemented by authorities, meant that the actual content of the Code principles could be decided by the Supreme Court. This resulted from both the competences assigned to the Supreme Court within the judicial supervision, including the non-instance supervision, and the professional activity of judges of the Supreme Court – some of them had been earlier members of the Codification Commission or the authors of commentaries to the Code²⁵⁶. Most often, the Supreme Court interpreted provisions answering legal questions addressed by lower courts. Another form of the Supreme Court's activity, this time usually initiated by the Minister of Justice who was privileged by the Code, was the mode of an extraordinary revision. Referring to the condition of the "infringement of the interests of the Polish People's Republic"²⁵⁷, imposed by the government in the final stage of work on the code, the minister could bring accusations against selected judicial decisions, however, they did not concern the fundamental legal issues²⁵⁸. They were also not subject to the guidelines of the Supreme Court and the practice of justice. The resolution of the General Assembly of the Supreme Court of 1976 relating to the efficiency of judicial proceedings²⁵⁹, in the section on civil procedure, focused only on issues involving social ownership, urging judges to a more frequent admission of evidence *ex officio* and cooperation with prosecutors²⁶⁰.

²⁵⁶ See e.g.: Z. Resich, W. Siedlecki (eds), *Komentarz do Kodeksu postępowania cywilnego* [Commentary to the Code of Civil Procedure], Warszawa 1975.

²⁵⁷ About the faulty treatment of the breach of interests of the Polish People's Republic as an independent basis for an extraordinary revision, see: A. Mączyński, *Glosa do orzeczenia SN z 25.10.1974 r., sygn. III PRN 38/74* [Commentary to the decision of the Supreme Court of 25.10.1974, III PRN 38/74], *Nowe Prawo* [New Law] 1978, no. 5, pp. 822-823.

²⁵⁸ An example is the contested decision establishing 1 kilometer of road providing necessary access, which was considered by the minister as a decision affecting the fundamental interests of the Polish People's Republic. The scale of the problem was signaled by: A. Mączyński, *Z dyskusyjnej problematyki rewizji nadzwyczajnej w postępowaniu cywilnym* [On the Arguable Issue of an Extraordinary Revision in the Civil Proceedings], *Studia Cywilistyczne* [Civilistic Studies] 1967, vol. X, p. 156.

²⁵⁹ The resolution of the General Assembly of the Supreme Court of 15.07.1974, KWPR 2/74, *Orzecznictwo Sądu Najwyższego – Izba Cywilna/Pracy* [Decisions of the Supreme Court – Civil/Labor Law Chamber] 1974, no. 12, item 203.

²⁶⁰ See: P. Piszczek (ed.), *Orzecznictwo Sądu Najwyższego. Postępowanie cywilne* [The Supreme Court Rulings. Civil Proceedings], Białystok 1992, pp. 567-568.

“Difficult cases” requiring legal analysis did not appear before the Supreme Court often owing to defective provisions, which were also pushed through by the government, governing the procedure of the extraordinary revision. However, the postulates to amend the Code formulated by the legal doctrine, which aimed to extend the right to bring an extraordinary revision and to introduce the institution of pre-trial²⁶¹, were not accepted, as with other proposed amendments. Meanwhile, Polish jurisprudence developed a number of procedural issues, including: procedural conditions, constituent judgments, judgments of review court, immediate enforceability of judgments, effectiveness of judgements, subjective transformation of a lawsuit, and procedural succession, as well as prosecutor participation²⁶².

The Supreme Court’s case-law did not correct the principles of Polish procedure, subjecting them primarily to linguistic and functional interpretation²⁶³. The Supreme Court contributed, however, to the analysis of issues arising from the legislative compilation of several legal standards and the vicissitudes of Polish civil procedure. Among problems which aroused great interest were Article 2 and Article 13 of the Code of Civil Procedure, the first of which referred exclusively to the principles of the Code, and the second to the appropriate application of provisions concerning the process in non-litigious proceedings. This was related to still existing serious restrictions of the jurisdiction of common courts, the functioning of some proceedings that were not covered by the provisions of the Code, as well as the instrumental shifting of boundaries between the litigious and non-litigious modes. In relation to the principle of objective truth, also the judicial involvement in dispositive actions of the parties²⁶⁴, the admissibility of adjudication over request²⁶⁵ and the

²⁶¹ See more: Międzyński, *supra* note 257, pp. 160-161, 176-177.

²⁶² See more: S. Włodyka, *Współuczestnictwo konieczne w procesie cywilnym* [Required Co-Participation in the Civil Process], *Studia Cywilistyczne* [Civilistic Studies] 1967, vol. X, p. 108, 127; W. Broniewicz, *Powództwo prokuratora w polskim procesie cywilnym* [Prosecutor’s Action in the Polish Civil Process], *Państwo i Prawo* [State and Law] 1966, no. 7-8, p. 36; T. Potapowicz (ed.), *Powództwo prokuratora w sprawach z art. 412 Kodeksu cywilnego* [Prosecutor’s Action Brought in Cases from Art. 412 of the Civil Code], Warszawa 1970.

²⁶³ On the bases of the analysis of the decisions of the Supreme Court issued in years 1966-1985, see: Piszczek, *supra* note 260.

²⁶⁴ See: the decision of the Supreme Court of 12.03.1965, I PR 6/65, *Orzecznictwo Sądu Najwyższego - Izba Cywilna/Pracy* [Decisions of the Supreme Court - Civil/Labor Law

ability to take new facts and evidence *ex officio* by the court of second instance²⁶⁶ were considered. The principle of objective truth was also combined with the provisions concerning the burden of proof²⁶⁷ while interpreting the duties of a judge in the following sequence: boosting requests for granting evidence, taking evidence *ex officio*, settlement of the case with the reference to the burden of proof – in case of the ineffectiveness of the second of the actions²⁶⁸. This concept was promoted for the benefit of the interests of the units of a socialised economy. It was a symbolic example of the inconsistency of the political and economic ideology of socialist law. When authorities pressed for the granting of additional powers to judges and prosecutors, limiting dispositive and adversarial principles, they relied on the socially popular argument of the need to support economically weak units. At the time when these principles entered into force, it turned out that the entities, which should have benefited from this preference were state-owned enterprises, officially presented as the economic vanguard²⁶⁹. Meanwhile, the reason for their procedural passiveness was their legal and factual dependence²⁷⁰.

Chamber] 1966, no. 2, item 18; the decision of the Supreme Court of 5.11.1966, II CR 387/66, Orzecznictwo Sądu Najwyższego – Izba Cywilna/Pracy [Decisions of the Supreme Court – Civil/Labor Law Chamber] 1967, no. 7-8, item 133, thesis 3 of the sentence.

²⁶⁵ See: the resolution of the Supreme Court of 30.05.1966, III PZP 15/66, Orzecznictwo Sądu Najwyższego – Izba Cywilna/Pracy [Decisions of the Supreme Court – Civil/Labor Law Chamber] 1966, no. 12, item 204.

²⁶⁶ See more: Hanausek, *supra* note 242, p. 175.

²⁶⁷ Article 3 § 2 of the Code of Civil Procedure – the resolution of the Supreme Court of 9.06.1976, III CZP 46/75, Orzecznictwo Sądu Najwyższego – Izba Cywilna/Pracy [Decisions of the Supreme Court – Civil/Labor Law Chamber] 1976, no. 9, item 184; the decision of the Supreme Court of 5.02.1980, IV PR 376/79, Orzecznictwo Sądu Najwyższego – Izba Cywilna/Pracy [Decisions of the Supreme Court – Civil/Labor Law Chamber] 1980, no. 9, item 173; the resolution of the Supreme Court of 10.11.1986, III CZP 17/86, Orzecznictwo Sądu Najwyższego – Izba Cywilna/Pracy [Decisions of the Supreme Court – Civil/Labor Law Chamber] 1987, no. 3, item 145.

²⁶⁸ The resolution of the Supreme Court of 21.09.1969, III PZP 24/69, Orzecznictwo Sądu Najwyższego [Decisions of the Supreme Court] 1970, item 76.

²⁶⁹ See: J. Pietrzykowski, *Orzecznictwo sądów w sprawach cywilnych* [Courts' Rulings in Civil Cases], Biuletyn Ministerstwa Sprawiedliwości [Ministry of Justice Bulletin] 1966, no. 1, p. 65; J. Suchecki, *Egzekucja należności jednostek gospodarki uspołecznionej* [The Execution of Receivables of the Units of a Socialised Economy], Zeszyty Problemowo-Analityczne Ministerstwa Sprawiedliwości [Problem-Analytical Journal of the Ministry of Justice] 1971, no. 19, pp. 99-124.

²⁷⁰ See: Machnikowska, *supra* note 201, pp. 373-377, 381-385, 580-590.

The principles of social coexistence were also important for the principles of civil procedure. They were formulated by the Code as a general clause in order to prevent the abuse of subjective rights. The principles were invoked several times in the Code of Civil Procedure, for example while regulating the judicial review of dispositive actions of the parties. But in political practice they were assigned an additional function, in some cases resulting in the actual acquisition of rights by an unauthorised person. Especially, this was the case during the ownership transformation, when citizens affected by the situation and seeking protection were constantly refused such protection (their claims were dismissed), and the Supreme Court began to treat these judgments as *res judicata*²⁷¹. Consequently, even though the Supreme Court emphasised the requirement to sufficiently define the content of the principles of social coexistence, if the court had taken it into account it would usually have functioned in a very general form²⁷². This created the possibility of favouring one of the parties, not always associated with the idea of the humanism of a society building socialism and at the same time caring for granting mutual assistance, which was indicated in the subsequent guidelines of the Supreme Court²⁷³.

4. THE CHANGE OF THE PRINCIPLES OF THE CODE OF CIVIL PROCEDURE – 1996

For the operation of the Code of Civil Procedure of 1964, as well as for the whole system of law in Poland, a landmark date was the year 1989. Due to the progressive failure of the economic model and the still existing social opposition against state authorities, change of the political system became possible. It restored the legal guarantees of citizens' freedoms, which had been eliminated, starting from the independence of the judiciary and the autonomy of individuals in the sphere of civil law relations. Although the Code of Civil Procedure was not an act that was immediately

²⁷¹ The resolution of the Supreme Court of 4.07.1969, III CRN 231/69; *Orzecznictwo Sądu Najwyższego* [Decisions of the Supreme Court] 1970, item 72.

²⁷² See more: T. Justyński, *Nadużycie prawa w polskim prawie cywilnym* [The Abuse of Rights in the Polish Civil Law], Kraków 2000, pp. 114-152, 201-205.

²⁷³ The resolution of the Supreme Court of 18.05.1968, III CZP 70/66, *Orzecznictwo Sądu Najwyższego* [Decisions of the Supreme Court] 1968, item 77.

changed, its rank increased already in 1989-1990 with the abolition of the restrictions on taking legal actions and thereby the extent of the scope of the Code's procedural principles, as well as the restoration of the classical principles of substantive civil law²⁷⁴. The systemic reform of the Code of Civil Procedure took place a few years later, in 1996²⁷⁵. It had a much more serious nature than in the case of the Civil Code²⁷⁶, not only removing solutions imposed by socialist legal doctrine, but also introducing principles and regulations which met the needs of a society functioning in the twenty-first century. At that time some disputes also re-emerged, derived from the interwar period, about the *ratio* between various functions of civil process and the methods of management of the courts' efficiency through procedural provisions.

In the first place, the new provisions strengthened the adversarial process. The restrictions of the dispositive principle were decreased, though the right to adjudge more than requested and to take evidence *ex officio* as well as the judicial control of dispositive actions were retained. The provisions relating to these issues were modified by limiting the scope of their application. On the other hand, the system of legal remedies underwent far-reaching transformations, restoring the institutions of an appeal and a cassation (a cassation appeal), in a modified, with respect to the Code of 1930, form. The extensive procedural rights were maintained by the prosecutor.

The nature of the changes, which were relevant primarily to the adversarial principle, was announced by the amendment of the wording of the principle of truth, which revoked the part of the provision referring to the court's duties (Article 3). The principle of the privileged protection of social ownership, by which entities became subject to the full jurisdiction of common courts and hence the binding force of the Code of Civil Procedure in 1989, was also abolished. Not only did Article 4 lose its binding force, but also the prerequisite for the protection of social ownership was removed from other provisions entitling courts or prosecutors to

²⁷⁴ Law of 28.07.1990, Dz.U. [Journal of Laws] No. 55, item 321.

²⁷⁵ Law of 1.03.1996, Dz.U. [Journal of Laws] No. 43, item 189.

²⁷⁶ Such a method was used to amend the Civil Code in the part regulating ownership and limited real rights. Ideological Articles 126-139 of the Civil Code were repealed, but the vast majority of the other provisions were maintained.

increased activity, also in the sphere of dispositive actions. At the same time, the majority of entities, classified as the representatives of social property acquired legal personality and financial independence, providing their full judicial and procedural capacity.

The reduction of the restrictions of the dispositive principle was based, among others, on changing the wording of certain provisions concerning the judicial review of dispositive actions – the withdrawal of a lawsuit or the limitation of an action. They clearly obtained the nature of rights, and not obligations (“may consider”), which could be performed only in enumerated cases, among which the condition of gross violation of the interests of entitled persons was replaced by the criterion of circumventing the law. The amendment of 1996 also introduced the principle that courts were bound by recognised claims (Article 213), subject to judicial review of the same conditions as for the withdrawal of a lawsuit. The regulations concerning the judicial settlement, the withdrawal of allegations, and the objection to the default judgment were maintained without any changes.

While maintaining the courts’ right to take evidence *ex officio*, the wording of the relevant provision was partly changed by removing their additional right to order an investigation in order to determine the necessary evidence. The fact that the possibility of taking evidence *ex officio* became a procedural exception resulted primarily from the repeal of the normative duties of a judge with respect to the principle of objective truth, which was not visible in Article 232. The burden of proof was once again transferred on the parties in order to reconstruct the classic adversarial principle. Also the restrictions of the dispositive principle were amended – cases brought by the units of socialised economy were removed from the list of exceptions concerning the courts’ right to adjudge more than requested.

The appeal proceedings were also subject to important transformations. Providing new legal remedies, the legislator decided to introduce the model of a full appeal. The judgment of the court of first instance in any case could be challenged in this mode and there were no restrictions concerning the basis of the appeal. The court of second instance received the right to conduct evidence proceedings and to issue judgement on the merits. The exceptions from the principle that the court

shall be bound by the scope of requests presented in the appeal included only conditions concerning the nullity of the proceedings and not hearing the substance of the case by the court of first instance. The cassation was established as a non-instance means of surveillance. The right to lodge the cassation was subject to numerous limitations starting from objective exemptions, through the regulation of the grounds of appeal – having only a legal nature: the misinterpretation or incorrect application of substantive law, or the procedural infringements having a significant impact on the outcome of the case. The cassation could be lodged above all by the parties in the case while the prosecutor could lodge it only if he participated in the appeal proceedings. Eliminating the previous dominance of political factors, the right to appeal was not granted to the Minister of Justice. The proceedings by the Supreme Court were once again transformed into an institution of judicial supervision and therefore the relevant position of the Supreme Court in the legal system was restored.

The provisions concerning the principle of concentration of the material submitted in court proceedings and the principle of immediacy were not subject to amendments, suspending the previously considered introduction of evidence preclusion before the court of first instance. The evidence preclusion before the court of second instance was reformulated. The courts could disregard new facts and evidence if the party could have presented them earlier or there was no need to take them into account (Article 381). The efficiency of the procedure was supposed to be provided by a number of procedural simplifications, accompanying the modification of guiding procedural principles.

Although most of the reforms of the Polish civil procedure conducted in 1996 were positively assessed by the legal community, some concerns were still being reported in relation to certain normative provisions. They included both arguments pointing to the need for far-reaching changes, as well as allegations of a too hasty removal of some socially important regulations²⁷⁷. In both cases, the previous experience and the procedural standards implemented in other European countries, including those which

²⁷⁷ See e.g.: T. Liszcz, *Kontradiktoryjność i postępowanie sądowe w sprawach pracowniczych po zmianach kodeksu postępowania cywilnego* [The Adversarial Principle and Court Proceedings in Employee Cases After the Amendments of the Code of Civil Procedure], *Praca i Zabezpieczenie Społeczne* [Labour and Social Security] 2005, no. 3, p. 20.

had undergone changes in recent years, were referred to. One of the topics which has provoked a permanent debate was the model of legal remedies, especially the appeal²⁷⁸. Equally in dispute was the matter of the formulation of procedural principles in relation to the requirement of the efficiency of civil procedure.

The point of reference for the further evolution, in the twenty-first century, of Polish civil procedure includes both the progressive consolidation of legislation in the member states of the European Union and the computerisation of society, as well as the need to increase the economic and social efficiency of the judicial protection of civil law relations, with particular emphasis on their new forms and types.

²⁷⁸ See: J. Gudowski, *Pogląd na kasację* [Opinion on the cassation], [in:] P. Grzegorzczuk, K. Knoppek, M. Walasik (eds), *Proces cywilny. Nauka-Kodyfikacja-Praktyka. Księga jubileuszowa dedykowana Profesorowi Feliksowi Zedlerowi* [Civil Process. Doctrine-Codification-Practice. Jubilee Book Dedicated to Professor Feliks Zedler], Warszawa 2012, p. 149 et seq.; T. Wiśniewski, *O swoistości postępowania kasacyjnego (zagadnienia wybrane)* [The Specificity of Cassation Proceedings (Selected Issues)], [in:] P. Grzegorzczuk, K. Knoppek, M. Walasik (eds), *Proces cywilny. Nauka...* [Civil Process. Doctrine...], pp. 377 et seq.; P. Grzegorzczuk, *Dopuszczalność i kształt apelacji – perspektywy przyszłej regulacji z uwzględnieniem standardów konstytucyjnych i międzynarodowych* [Admissibility and Form of Appeal – Prospects for the Future Regulation With Regard to Constitutional and International Standards], conference materials from the National Congress of the Chairs and Institutes of Civil Procedure, 26-29.09.2013, Katowice.

